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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 30th April, 2024

No. 13/2/100-HII(2)-2024/6882.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 9/2023 dated 13.02.2024 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between:

CHANDIGARH GOVT. TRANSPORT WORKER UNION, CTU CHANDIGARH (REGD. & RECOGNIZED) THROUGH ITS PRESIDENT AND SECRETARY ON BEHALF OF SH. HARMESH SINGH - CONDUCTOR NO.713, CTU, CHANDIGARH (Workman)

AND

THE DIVISIONAL MANGER, CHANDIGARH TRANSPORT UNDERTAKING, U.T. CHANDIGARH. (Management)

AWARD

1. The Chandigarh Govt. Transport Worker's Union, CTU Chandigarh (*here-in-after referred "workers' union"*) has presented industrial dispute under Section 2(k) of the Industrial Disputes Act, 1947 (*here-in-after in short called "ID Act"*).

2. Briefly stated the averments of claim statement are that Harmesh Singh - Conductor No.713, CTU, Chandigarh (*here-in-after referred "workman"*) charge sheeted as per charge sheet dated 10.09.2009 on the allegations that while on checking his bus on 09.10.2008, it was found that he had re-issued old tickets to the passengers who were travelling from Shimla to Chandigarh. The workman submitted his reply and stated that he had not re-issued the old tickets as alleged in the charge-sheet but issued the tickets out of bundles which were issued for that route only. The workman further submitted that he inadvertently punched the alleged tickets which were subsequently corrected with pen, which has created unnecessary and unfounded suspicion in the mind of the checking staff. On the basis of that suspicion, a false report has been made against the workman. Without appreciating the reply of the workman, the Inquiry Officer was appointed to hold the regular inquiry. The Inquiry Officer has not conducted the inquiry proceedings as per law and in spite of the fact that the charges against the workman were not proved on record, he submitted his report against the workman by holding the workman guilty of the charges. The workman again submitted a detailed reply against the findings of the Inquiry Officer but Punishing Authority did not appreciate the reply of the workman and defence evidence of the workman has not been taken into consideration at all. No reasoning has been given for discarding

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the defence of the workman. The Punishing Authority passed a punishment order dated 07.01.2016 / 25.01.2016 whereby two increments of the workman have been stopped with cumulative effect and it has been further ordered that the workman shall not get pay of the suspension period above the subsistence allowance. By the time, workers' union was going to file demand notice, the Hon'ble High Court made it necessary to file the service appeal which was not necessary earlier for filing demand notice. Therefore, the workman filed appeal but the Appellate Authority without appreciating the judgment of Hon'ble High Court rejected the appeal of workman illegally vide order dated 13.05.2019 without considering the merits of the case. The order of punishment dated 07.01.2016 /25.01.2016 and the order of the appellate authority dated 13.05.2019 are illegal and against the material on record. Therefore, the same deserves to be set aside amongst others on the following grounds:—

- a) It is a case of no evidence and charges are based on suspicion. The charges have not been proved at all. Onus was upon the department to prove the alleged tickets were old tickets and were issued to the workman for performing his duties on Chandigarh-Sujanpur route. Further, alleged tickets were not issued to the workman for sale on 09.10.2008 by the Ticket Branch. There is no such evidence on record and in the absence of that evidence workman cannot be held guilty. No evidence was produced from Box Branch in spite of specific statement of Inspector that the same can be verified from the Box Branch.
- b) Though it was duty of the department to prove the above facts, but workman produced Shri Madan Gopal - Conductor No.260 from Box Branch - I as his defence witness, who categorically stated that he had issued the alleged tickets to the workman after verification on the evening of 08.10.2008 for sale on Chandigarh-Shimla route, which evidence clearly proves that alleged tickets were not issued to the workman for sale on Chandigarh-Sujanpur route, therefore, issuing and collecting of the same while on Chandigarh-Sujanpur route and re-issuing the same on Chandigarh-Shimla route cannot be believed at all. But this aspect of defence evidence which is supported by oral as well documentary evidence has not been considered at all by the Inquiry Officer, Punishing authority and the Appellate Authority.
- c) The Inquiry Officer as well as Punishing Authority failed to appreciate the way bill of the workman issued for Shimla route wherein alleged tickets are duly entered to have been handed over to the workman by Box Branch and there is no evidence and allegations that way bill was tempered with and do not tally with the official record. Report and statements of Inspectors to the effect that workman got managed these tickets entered in his way bill has not been proved on record at all rather the same stands falsified by the defence statement of witness produced from box branch who has stated that there is no tempering of the way bill.
- d) Inquiry Officer as well as Punishing Authority failed to appreciate the fact that the alleged tickets were duly issued to the workman for sale on Shimla route and workman while selling the same, inadvertently gave wrong punch, which was corrected with pen for which he is legally competent under Rules, therefore, no misconduct is made out against the workman.
- e) The Inquiry Officer as well as Punishing Authority failed to appreciate the defence evidence to that effect defence witness has categorically stated that he had issued the alleged tickets for sale on Shimla route and none of the tickets were with punch.
- f) The findings of the Inquiry Officer, Punishing Authority as well as Appellate Authority are perverse and not based on proper appreciation of facts on record. It is a case of no evidence.
- g) The findings of Inquiry Officer, Punishing Authority as well as Appellate Authority are illegal because defence evidence of the workman has not been considered at all. It is settled law that Inquiry Officer as well as Punishing Authority are legally bound to consider the defence evidence and give reasons for discarding the same. The workman sold the tickets which were given to him for sale on that route only.

- h) The Appellate Authority illegally dismissed the appeal of workman without appreciating the judgment of Hon'ble High Court as well as grounds of appeal.

Prayer is made that reference of the workmen may be accepted and the illegal orders of punishment dated 07.01.2016 / 25.01.2016 and order of Appellate Authority dated 13.05.2019 may be set aside and all the monetary benefits may be released to the workman along with the interest @ 12% per annum, which were withheld by virtue of these illegal orders.

3. On notice, management contested the claim application by filing written reply dated 21.03.2023 (filed on 24.03.2023) wherein preliminary submissions are made on the ground that the present statement of claim deserves to be dismissed on the ground that the workman is hiding the material facts from this Hon'ble Court as the workman is a habitual offender and he has been awarded various punishments in the frauds committed by him at various occasions. History sheet in respect of Harmesh Singh -Conductor No.713 is as follows:—

Sr. No.	Punishment	Remarks
1.	Order to stop two increments with cumulative effect and suspension period 10.10.2008 to 17.12.2008 limited to the grant of subsistence allowance only vide Order No.1054 dated 25.01.2016	Fraud of ₹ 700/-
2.	Once increment stopped with cumulative effect and order that he is not paid anything more than he has already been paid during the suspension period vide O/o No.16071 dated 20.11.1992	Fraud of ₹ 20/-
3.	Order to recover ₹ 2,000/- and suspension period w.e.f. 20.08.1993 to 24.09.1993 vide O/o 4054 dated 24.07.1993	Fraud of ₹ 17/-
4.	Censured the service vide O/o dated increments with cumulative effect and suspension period w.e.f. 10.01.1997 to 28.02.1997 limited to the grant of subsistence allowance only vide O/o No.1486 dated 17.12.1999. In compliance of Home Secretary Order Endst. No.7758-HIII(2)-2001 dated 17.12.2001 after modification of the order dated 17.12.1999 as censure the service instead of three increments stopped with cumulative effect vide Endst. No. 307 dated 04.03.2002.	Fraud of ₹ 100/-
5.	Order to stop two increments without cumulative effect and suspension period w.e.f. 05.03.1997 to 20.05.1997 vide O/ No.665 dated 27.08.2004.	Fraud of ₹ 210/-
6.	Order to stop one increment without cumulative effect and suspension period w.e.f. 17.11.1997 to 19.12.1997 vide O/o No.874 dated 08.07.2003.	Fraud of ₹ 32/-
7.	Order to stop five increments with cumulative effect and suspension period w.e.f. 10.03.2006 to 16.07.2006 vide O/o No.348 dated 17.05.2010.	Fraud of ₹350/-
8.	Order to recover ₹3000/- and suspension period w.e.f. 07.09.2006 to 08.10.2006 vide O/o No.1117 dated 09.06.2010.	Fraud of ₹ 33/-
9.	Charge-sheeted vide Memo No.5859/TA-IV/HO/CTU/2012 dated 03.07.2013 dropped and warned to be more careful in future vide order dated 23.02.2018 vide Endst. No.7880/EAC/III/2018 dated 17.05.2018.	Excess cash of ₹ 1,002/- (Grave misconduct)
10.	Order to recover ₹330/- and warned to be more careful in future. Suspension period be treated as duty period.	

4. It is further stated that the facts submitted by the workman are *supprescio veri* and *exprescio falsi* to the extent that the workman has completely suppressed the true and material facts. He has approached this Industrial Tribunal-cum-Labour Court with unclean hands. The workman has not availed the remedy of review as available under Rule 21 which is reproduced as below:—

"21. Review- (1) *Notwithstanding anything contained in these rules -*

- i) the Governor; or*
- ii) the Appellate Authority, within six months of the orders proposed to be reviewed; or*
- iii) any other authority, specific in this behalf by the Governor by a general or special orders, and within such time as may be prescribed in such general or special orders;*

may at any time, either on his or its own motion or otherwise call for records of any inquiry and review any orders made under these rules or under the rules repealed by Rule 25 from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the commissioner where such consultation is necessary and may -

- a) confirm, modify or set aside the order; or*
- b) confirm, reduce, enhance or set aside the penalty imposed by the other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or*
- c) remit the case to authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or*
- d) pass such other orders as it may deem fit:*

Provided that no order imposing or enhancing any penalty shall be made by any Reviewing Authority unless the Government employee concerned have been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of Rule 5 or to enhance the penalty imposed by the order sought to be reviewed to any to enhance the penalty specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 8 and except after consultation with the Commission, where such consultation is necessary."

The charges stand established against the workman on evidence. The penalty was lawfully imposed by the Disciplinary Authority and upheld by the Appellate Authority and has been imposed on the proved misconduct. A Court of law is to carry out judicial review of the impugned orders, whereas the nature of pleadings of the applicant shows that he is inviting this Tribunal to act as an Appellate Authority which is not permissible and as such the instant statement of claim deserves to be dismissed. The penalty imposed upon the workman is proportionate to the gravity of charge levelled and proved against the workman which is liable to be upheld. There is no procedural lapse or irregularity in passing the impugned orders. It is well settled law that strict rules of evidence are not applicable to the departmental inquiry proceedings. The only requirement of law is that the allegation against the delinquent official should be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the charges against the delinquent official. The Court exercising jurisdiction of judicial review would not interfere with the findings of facts arrived at in the departmental inquiry proceedings except in a case of malafide or perversity. The Court cannot embark upon re-appreciating the evidence weighing the same like an Appellate Authority. It is further stated that the workman submitted his reply to charge sheet issued on 12.10.2009 and denied the charges levelled

against him. The competent authority considered his reply and having been found unsatisfactory, ordered to hold a regular departmental inquiry against the workman by appointing an Inquiry Officer vide order No.12744 dated 03.11.2009. The workman was afforded reasonable opportunity to defend his case during the inquiry proceedings by the Inquiry Officer but he failed to prove his stand. Thus, the charges levelled against the workman stood proved vide the findings of the Inquiry Officer dated 27.05.2015. The workman was also given an opportunity of personal hearing to defend his case by the competent authority. The competent authority after considering all the facts of the case, ordered to stop two increments with cumulative effect of the workman and his suspension period w.e.f. 10.10.2008 to 17.12.2008 was ordered to be limited to the grant of subsistence allowance only vide order dated 07.01.2016 / 25.01.2016. The workman filed appeal No.08 of 2018 before the Appellate Authority against order dated 07.01.2016 / 25.01.2016 passed by the Divisional Manager, CTU. The appeal was dismissed by the Appellate Authority being time barred vide order dated 13.05.2019. The operative para of order dated 13.05.2019 is as follows:—

"On hearing both the parties and perusal of all the documents on records, it revealed that the Appeal is time barred. As per provisions of the Punjab Civil Services (Punishment & Appeal) Rules, 1970, the appellant was required to file appeal within 45 days of the issuance of impugned order. In the instant case, the impugned order was passed on 07.01.2016 and the appellant is preferring the instant appeal on 20.02.2018 i.e. after more than two years. Further the appellant failed either to explain the delay or to produce any document in support of his version. He even did not adduce the application for condonation of delay while filing the present appeal."

5. Further on merits, it is stated that the contents that workman was charge-sheeted as per charge sheet dated 10.09.2009 on the allegation that while on checking his bus on 09.10.2008, it was found that he had re-issued old tickets to the passengers, who were travelling from Shimla to Chandigarh, are admitted being matter of record. It is admitted that the workman filed reply to the charge-sheet. It is further stated that the workman only made a concocted story to save his skin. The workman was caught by the checking staff, re-issuing the old tickets to the passengers. The workman himself admitted that he had issued the tickets on which he had punched at 1 and 31 stage. Though the workman pleaded that the same was done inadvertently, yet first of all he is not supposed to do any act inadvertently because he is a trained Conductor and well aware about the tickets, stages and fare of the route. Secondly, he is taking this plea only to save his skin otherwise, it is clear that he has concocted a false story whereas on the other side the charges have been duly established against him on record. The reply submitted by the workman was duly considered by the competent authority but the same was not found satisfactory. Hence, regular departmental inquiry was conducted. Further, the inquiry was conducted by following due procedure of law. A regular departmental inquiry was conducted against the workman wherein all the prosecution witnesses were examined and they deposed the version of the prosecution and their statements corroborated with each other i.e. against the workman. Further, the workman was given an opportunity to cross-examine the prosecution witnesses. He also tendered his evidence in his defence which was duly considered by the Inquiry Officer and all the documents, record, facts and evidence of the case was appreciated by the Inquiry Officer. After considering all aspects of the case in detail, the Inquiry Officer held the workman guilty of the charges. There is no lacunae on part of the inquiry proceedings. The prosecution has duly established the case against the workman on record. Hence, the charges stood proved against the workman in the departmental inquiry. The reply filed by the workman against the findings of the Inquiry Officer was duly considered by the competent authority and the same was not found satisfactory. The order passed by the punishing authority on 07.01.2016 / 25.01.2016 is just, right and legal and the same is liable to be upheld in the eyes of law as the same has been passed after following the due procedure of law. The workman filed appeal No.08 of 2018 before Appellate Authority against order dated 07.01.2016 / 25.01.2016 passed by the Divisional Manager, CTU. The said appeal was dismissed by the Appellate Authority being time barred vide order dated 13.05.2019. The workman was charge sheeted on the report of the inspectorate

staff for misappropriation of ₹ 700/- by way of re-issuing old tickets to the passengers while he was on duty with bus No.CH-01-G-8889 on dated 09.10.2008 whereas these tickets were not issued to him by the Box Branch and he was re-issuing the tickets without information and prior permission of the competent authority which clearly amounts to misconduct on the part of the workman because the said old tickets had already been issued by the workman while he was on duty on route No.112-D i.e. Sujanpur to Chandigarh on 08.10.2008 and the tickets were punched at stages 1 to 31 i.e. Sujanpur to Chandigarh whereas the stage of Shimla to Chandigarh is 1 to 21. It is clearly established that the workman had illegally collected the old tickets from the passengers while he was on route with mala fide intention to re-issue the same. Thereafter, the workman again used old tickets while he was on another route on dated 09.10.2008. Moreover, the old tickets were related to Punjab area and the workman was using the old tickets in the area of Himachal Pradesh. The aforesaid old tickets were recovered from the workman which are on record. The perusal of the same clearly indicates that these tickets were not valid for Himachal Pradesh and the same were valid only for U.T. and Punjab area. The workman fraudulently mentioned these tickets numbers in his way bill i.e. clearly a fraud on part of the workman and the workman deserves a strict action for his misconduct which he has committed while performing his official duty. The workman admitted his fault on the spot and he put his signature on the way bill. Further, similar stand is taken as taken in the preliminary submissions. Rest of the averments of the claim statement are denied as wrong and prayer is made that the claim petition may be dismissed being devoid of any merits.

6. The workers' union filed rejoinder wherein the contents of the written reply except admitted facts of the claim statement are denied as wrong and averments of claim statement are reiterated.

7. From the pleadings of the parties, following issues were framed vide order dated 22.05.2023:—

1. Whether the punishment order dated 07.01.2016/25.01.2016 and order of Appellate Authority dated 13.05.2019 are illegal, if so its effect ? OPW
2. Whether the claim statement is not maintainable on the ground that workman has not exhausted the remedy of review ? OPM
3. Relief.

8. In evidence, the workman Harmesh Singh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with copy of documents Exhibit 'W1' & Exhibit 'W2'.

Exhibit 'W1' is grounds of appeal.

Exhibit 'W2' is order of appeal dated 09.05.2019 / endorsement dated 13.05.2019.

9. On 10.10.2023 the workman closed his evidence in affirmative.

10. On the other hand, management examined MW1 Gurvir Kaur - Junior Assistant, Office of CTU, Chandigarh who tendered her affidavit Exhibit 'MW1/A'.

11. On 05.01.2024 Learned Law Officer for the management closed the oral evidence. On 07.02.2024 Learned Law Officer for the management closed documentary evidence.

12. I have heard the arguments of Learned Representatives for the workers' union and Learned Law Officer for the management and perused the judicial file. My issue-wise findings are as below:-

Issue No. 1:

13. Onus to prove this issue is on the workers' union /workman.

14. Under this issue, the workman Harmesh Singh - Conductor No.713 examined himself as his own witness and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto which are not reproduced here for the sake of brevity. AW1 supported his oral version with copy of grounds of

appeal vide Exhibit 'W1' and copy of order dated 13.05.2019 passed by the Appellate Authority vide Exhibit 'W2'.

15. On the other hand, management examined MW1 Gurvir Kaur - Junior Assistant, CTU, Chandigarh vide her affidavit Exhibit 'MW1/A' deposed all the material contents of the written reply which are not reproduced here to avoid repetition.

16. From the oral as well as documentary evidence led by the parties, it comes out that Shri Harmesh Singh is employed as Conductor No.713 with CTU, Chandigarh. It is an undeniable fact of the parties that on 08.10.2008 Harmesh Singh was on duty as Conductor on route No.112-D from Chandigarh to Sujanpur. It is also an undeniable fact that on 09.10.2008 Harmesh Singh - Conductor was on duty as Conductor on route No.51 Shimla to Chandigarh with bus No.CH-01-G-8889.

17. On moving of application by the workers' union, in compliance with order dated 19.09.2023 of this Court, on 10.10.2023 the management placed on record attested copy of inquiry file in respect of Harmesh Singh -Conductor No.713.

18. Learned Law Officer for the management contended that this Court may not interfere with the punishment awarded. The quantum of punishment in a disciplinary case is within the domain of the competent authority. The jurisdiction of this Court is confined only to the procedural aspect of the departmental inquiry proceedings and the Court may not interfere with the findings of fact arrived at by the Inquiry Officer in the departmental inquiry. To my opinion, the aforesaid contention of Learned Law Officer is devoid of merits in view of Section 11A of the ID Act. In the judgment referred by Learned Representative for the workers' union reported in **2007(7) SCT 372 P&H** titled as **Punjab National Bank, Kurukshetra Versus Central Government Industrial Tribunal-cum-Labour Court, New Delhi and Another**, it has been held that after introduction of Section 11A of ID Act, 1947, Tribunal has the power to reappraise the evidence led to domestic inquiry. In para 10 of judgment of Hon'ble High Court of Madras referred by Learned Representative for the workers' union reported in **2022(4) SCT 476** titled as **E. Mani Versus The Managing Director, Tamil Nadu State Transport Corporation (Coimbatore Div-I) Ltd. & Others**, it has been held as under:—

"10. In the light of aforesaid decisions and considering the scope of Section 11A of the ID Act, the Labour Court ought to have re-appreciate the evidence in the domestic inquiry, as well evidence before it and then rendered its findings. Having not undertaken such exercise of re-appreciating the evidences and arriving at a conclusion, the proper recourse would be to remit the matter back to the Labour Court for reconsideration."

19. The law laid down in the judgements referred by Learned Law Officer reported in **AIR 1989 SC 1185** titled as **Union of India Versus Parma Nand**; **AIR 1991 SC 2407** titled as **Bank of India & Another Versus Degala Suryanaryana** is well recognised by this Court but the ratio of rulings is not applicable to the facts of the present case.

20. The disciplinary action against Harmesh Singh -Conductor No.713 (workman) was taken on the basis of report dated 10.10.2008 made by checking staff consisting of S/Sh. Dharampal - Inspector, Gurvinder Singh - Inspector, Prem Singh - Inspector and Madan Lal - Inspector, wherein it has been alleged that on dated 09.10.2008 at 15:00 Hrs., Bus No.CH-01-G-8889, route No.51 (Shimla to Chandigarh) was checked at Dharampur Chowk. During checking it was found that 7 passengers travelling from Shimla to Chandigarh were re-issued sold tickets of ₹ 100/- each. These tickets have been issued by making correction of stage with pen. On 08.10.2008 this Conductor was on duty on route No.112-D (Sujanpur to Chandigarh). The punch of all these tickets show Sujanpur to Chandigarh because punch of Sujanpur is from 1 to 31 and punch of Shimla is from 1 to 21. The conductor on 08.10.2008 collected these tickets from the passengers and cleverly got the same entered in the way bill. On 09.10.2008 while going from Chandigarh to Shimla no ticket of ₹ 47/- and ₹ 6/-were sold. These tickets were re-issued to the passenger from Shimla to Chandigarh. These tickets are of Punjab

area which are not used in the Himachal Area. This proves that ticket of ₹ 47/- and ₹ 6/- which are enclosed with the report were re-issued. In this manner, C-713 by re-issuing tickets of ₹ 700/- has embezzled ₹ 700/- belonging to Government Treasury. Conductor after admission of his guilt had signed on the way bill.

21. The disputed 14 tickets of ₹ 47/- and disputed 7 tickets of ₹ 6/- are enclosed with the report of inspectorate / checking staff. The disputed 14 tickets of ₹ 47/- bears serial No.0061227 to 0061240 and disputed 7 tickets of ₹ 6/- bears serial No. 0047442 to 0047448. In order to ascertain the fact whether these disputed tickets were re-issued to passenger on 09.10.2018 on route No.51 Shimla to Chandigarh, it is required for the management to establish that these tickets were sold by the Conductor No.713 on previous day i.e. 08.10.2018 on route No.112-D Sujampur to Chandigarh. Conductor's Way bill dated 08.10.2008 and 09.10.2008 is part of the inquiry file. As per way bill dated 08.10.2008, state & denomination (UT + PB, 47.00), series (Z), First No.(61201), last No.(61400), quantity (200) were issued to the Harmesh Singh - Conductor No.713. As per further details of Conductor's way bill dated 08.10.2008, 26 tickets of ₹ 47 were sold out of 200 i.e. up to serial No.61226 for amount of ₹ 1,222.00 and the remaining un-sold tickets from serial No.61227 were returned to office. Further, as per conductor's way bill dated 08.10.2008, state & denomination (PB, 6.00), series (CO), First No. (47423), last No. (47550), quantity (78) were issued to the Harmesh Singh - Conductor No.713. As per further details of Conductor's way bill dated 08.10.2008, 15 tickets of ₹ 6 were sold out of 78 i.e. up to serial No. 47437 for amount of ₹ 90.00 and the remaining un-sold tickets from serial No.47438 were returned to office. As per Conductor's way bill dated 08.10.2008, the Conductor had deposited the total amount of sold tickets in the sum of ₹12,087/- by mentioning the particulars of cash.

22. As per Conductor's way bill dated 09.10.2008 state & denomination (UT + PB, 47.00), series (Z), First No.(61227), last No.(61400), quantity (174) were issued to the Harmesh Singh - Conductor No.713, out of which 21 tickets were sold up to serial No.61247 for sum of ₹ 987/- and the remaining un-sold tickets from serial No.61248 were returned to office.

23. As per Conductor's way bill dated 09.10.2008, state & denomination (PB, 6.00), series (CO), First No.(47438), last No.(47550), quantity (63) were issued to the Harmesh Singh - Conductor No.713. As per further details of Conductor's way bill dated 09.10.2008, 13 tickets of ₹ 6 were sold out of 63 i.e. up to serial No.47450 for amount of ₹ 78.00 and the remaining un-sold tickets from serial No.47451 were returned to office. From the aforesaid details of conductor's way bill dated 08.10.2008 and 09.10.2008 it is duly proved on record that disputed tickets of ₹ 47/- from serial No.0061227 to 0061240 were not sold on 08.10.2008 and these tickets on return were deposited by the conductor No.713 along with other unsold tickets with the office of CTU on 08.10.2008 and the disputed tickets of ₹ 6/- from serial No.0047442 to 0047448 were not sold on 08.10.2008 and these tickets on return were deposited by the Conductor No.713 along with the other unsold tickets with the office of CTU on 08.10.2008. Thus, the disputed tickets of ₹ 47/- and ₹ 6/- are proved to have been issued by the Box Office of CTU on next day i.e. 09.10.2008 to Harmesh Singh - Conductor No.713. With this the management has failed to prove that the disputed tickets were sold by Harmesh Singh - Conductor No.713 on 08.10.2018 and then re-issued to the passengers on 09.10.2018. It is neither pleaded nor proved by the management that Harmesh Singh - Conductor No.713 has tampered with the entries of the Conductor's way bill dated 08.10.2018 and 09.10.2018. It is also neither pleaded nor proved by the management that Harmesh Singh - Conductor No.713 had any kind of connivance with the Box Officer, who had deposited the sold tickets in question on 08.10.2008 and re-issued the same on 09.10.2008 to the Conductor.

24. Learned Law Officer for the management argued that disputed tickets were bearing punch at stage from serial No.1 to 31, which is punch of Chandigarh-Sujanpur route, instead of the stage serial No.1 to 21, which is punch of Chandigarh-Shimla route. Much stress is laid upon the fact that in case the disputed tickets were not sold on 08.10.2008 then why the same were bearing punch at the stage serial No.1 to 31. In case, the disputed tickets for the first time were sold on 09.10.2008, then it must bear punch at the stage serial No.1 to 21. On the other hand, Learned Representative for the worker's union argued that admittedly the

disputed tickets were wrongly punched and Harmesh Singh - Conductor, being permitted under rules, issued the tickets by making correction with the pen and there is no illegality in the same. To my opinion, the argument of incorrect punch advanced by Learned Law Officer is devoid of merits, because in case the disputed tickets were bearing punch of Chandigarh-Sujanpur route, then Box Branch or the Box Officer, who on return deposited the unsold tickets with the office on 08.10.2008, would have raised an objection that the tickets being punched are already sold but as per the evidence on record, no such objection was raised by the Box Branch or the Box Officer while re-depositing the unsold tickets including the disputed tickets on 08.10.2008. Furthermore, Shri Gurvinder Singh - Inspector in his cross-examination before the Inquiry Officer admitted as correct that the Booking Branch has issued the tickets denomination ₹ 47/- UT area from 61227-61400 as per the way bill record on 08.10.2008. He further admitted as correct that the wrong punch ticket could be corrected with the mark of pen and the punch was on the ticket from stage No.1 to 31. He further admitted as correct that the tickets from stage No.1 to 21 were corrected by Conductor No.713, which shows Shimla to Chandigarh. He further admitted as correct that the ticket No.47442-47488 (6 No.) of ₹ 6/- Punjab area were also issued to the Conductor by the Box Branch and the said number were from 47438-47500. Shri Dharampal - Inspector in his cross-examination before the Inquiry Officer admitted as correct that the Conductor can correct the wrong punch with pen and issue to passengers. Shri Prem Singh - Inspector in his cross-examination before the Inquiry Officer admitted as correct that Box Branch can tell about the punched tickets filled on the way bill. He further admitted as correct that the Conductor has closed the number on the way bill before starting his duty on 09.10.2018. In the inquiry proceedings Shri Madan Gopal - Booking Incharge, Box Branch was examined by the workman in defence. Shri Madan Gopal in his examination-in-chief before the Inquiry Officer stated that on 08.10.2008 he was performing his duty as Booking Incharge, in Box Branch, CTU-I and on the said date he has made the box of Shri Harmesh Singh - C.No.713. Before issuing the box he has received the ticket box, way bill from the Conductor and tally the ticket numbers with the way bill which were issued to C.No.713. As per way bill the tickets were correct and there was no cutting in the tickets which were filled up in the way bill. When he issued the way bill to the Conductor 1st number of the copy of ticket denomination 47, 'Z' series of UT PB was 61227 and last number was 61400 and 1st number of copy of denomination 6 CO was 47438 and last number was 47550. When put to cross-examination by the Presenting Officer, DW Shri Madan Gopal admitted as correct that he was performing his evening duty in Box Branch - I on 08.10.2008 and he has collected the box of ticket from C. No.713 for making the box and there was no defect in the tickets which were handed over to him. He admitted as correct that he has issued the ticket box No.337721 to C-713 after preparing the box because he was due for duty on Shimla route. From the above-mentioned statements of inquiry witnesses examined on behalf of the department and defence witness Madan Gopal, it is duly proved on record that the unsold tickets after completion of Chandigarh-Sujanpur route, on return were deposited by Harmesh Singh - Conductor with the Box Branch of CTU in intact condition. Therefore, there is no question of re-sale of any ticket on 09.10.2008 on Chandigarh-Shimla as the previous sale of the disputed tickets on 08.10.2008 on Chandigarh-Sujanpur route does not stand proved. In the present case, MW1 Gurvir Kaur when put to cross-examination stated that as per the inquiry file the allegations against the workman is that he re-issued tickets of ₹ 47/- each of serial No.0061227 to 0061240. MW1 admittedly as correct that the way bill was issued to the workman on 08.10.2008 which is at internal page No.18 of inquiry file. MW1 voluntarily stated that she has no knowledge about the way bill. MW1 further stated that she cannot comment anything about the way bill even after going through the same on the inquiry file. She cannot say if as per the way bill at page 18 of inquiry file, from Sujanpur to Chandigarh the workman had sold 26 tickets of the denomination of ₹ 47/- from serial No.61201 to 61226 and rest of the copy was deposited in the Box Branch on 08.10.2008. The above referred facts put to MW1 in her cross-examination, being not specifically denied are deemed to be admitted under the law. MW1 further stated that as per way bill at internal page No.16 of the inquiry file, on 09.10.2008 for Chandigarh to Shimla route and back to Chandigarh, the tickets of denomination of ₹ 47/- from serial No.61227 to 61400 were issued to the workman and out of that on 09.10.2008 workman sold tickets up to 61247 to different passengers. The above referred version of MW1 supports the plea of the workers' union that

the disputed tickets of denomination of ₹ 47/- were not previously sold on 08.10.2008 and the same were issued to the workman on 09.10.2008 and these were sold for the first time on 09.10.2008.

25. Learned Law Officer for the management argued that the disputed tickets were not meant to be sold in the area of Himachal Pradesh and the same were restricted to be sold only in the area of Punjab & U.T. On the other hand, Learned Representative for the workers' union argued that it is own case of the management that on 08.10.2008 the tickets in question were sold in the area of Sujanpur while on Chandigarh-Sujanpur route. The area of Sujanpur falls within the territory of Himachal Pradesh. If the disputed tickets could be sold in Sujanpur (Himachal Pradesh) then why the same could not be sold on Chandigarh-Shimla route. To my opinion, the arguments advanced by Learned Law Officer that the disputed tickets were not meant to be sold in the area of Himachal Pradesh carries no force because the management has failed to controvert the fact that on route No.112-D, the area of Sujanpur falls within the territory of Himachal Pradesh. The tickets of ₹ 47 and ₹ 6 sold on 08.10.2008 from Chandigarh to Sujanpur route No.112-D and sold on 09.10.2008 from Chandigarh to Shimla route No. 51 were out of the same series. There is no objection of the management of sale of tickets of same series on Chandigarh to Sujanpur route.

26. Learned Law Officer for the management argued that the competent authority had gone through the past service record of the workman which was found unsatisfactory. The record of the workman fully detailed in the history sheet mention in para 1 of preliminary submissions of written reply and para 2 of affidavit Exhibit 'MW1/A' would show that the workman is habitual offender. The workman has committed several offences while performing his duties and punished many times for the same. The workman did not mend his style of working. After considering all these facts the punishment order was passed by the competent authority which was upheld in the appeal by the competent Appellate Authority. The aforesaid plea of the management would suggest that while awarding punishment to the workman his previous conduct was taken into consideration. Admittedly, the previous conduct of the workman was not part of the charge-sheet or show cause notice. In the judgment referred by Learned Representative for the workers' union reported in **2010(4) SCT 600SC titled as Mohd. Yunus Khan Versus State of U.P. and Others**, which is applicable to the facts of the present case to an extent, Hon'ble Supreme Court of India observed that the Appellate Authority could not consider the past conduct of the appellant to justify the order of punishment passed by the disciplinary authority without bringing it to the notice of the appellant. If the disciplinary authority wants to consider the past conduct of the employee in imposing a punishment, the delinquent is entitled to notice thereof and generally the charge sheet would contain such an article or he should be informed of the same at the stage of show cause notice for imposing punishment. In the present case, no notice is proved to have been given to the workman either by the Punishing Authority or by the Appellate Authority before taking into consideration his previous conduct. Relevant para 34 of the judgment **2010(4) SCT 600SC** is reproduced as below:-

"34. This Court in Union of India & Ors. v. Bishamber Das Dogra, (2009) 13 SCC 102, considered the earlier judgments of this Court in State of Assam v. Bimal Kumar Pandit, AIR 1963 Supreme Court 1612; India Marine Service (P) Ltd. v. Their Workmen, AIR 1963 Supreme Court 528; State of Mysore v. K. Manche Gowda, AIR 1964 Supreme Court 506; Colour-Chem Ltd. V. A.L. Alaspurkar & Ors., 1998(1) S.C.T. 757 : AIR 1998 Supreme Court 948; Director General, RPF v. Ch. Sai Bau, 2003(1) S.C.T. 820 : (2003)4 SCC 331, Bharat Forge Co. Ltd. V. Uttam Manohar Nakate, 2005(1) S.C.T. 745 : (2005)2 SCC 489; and Govt. of A.P. & Ors. v. Mohd. Taher Ali, 2007(4) S.C.T. 615 : 2007(6) R.A.J. 59 : (2007)8 SCC 656 and came to the conclusion that it is desirable that the delinquent employee be informed by the disciplinary authority that his past conduct could be taken into consideration while imposing the punishment. However, in case of misconduct of a grave nature, even in the absence of statutory rules, the Authority may take into consideration the indisputable past conduct/service record of the delinquent for adding the weight to the decision of imposing the punishment if the fact of the case so required."

27. In view of the reasons recorded above, punishment order dated 07.01.2016 /endorsement dated 25.01.2016 is proved to have been passed without proper appreciation of evidence led before the Inquiry Officer. Consequently, the punishment order dated 07.01.2016 / endorsement dated 25.01.2016 is not sustainable being illegal. The order of appeal dated 09.05.2019 / endorsement dated 13.05.2019 / Exhibit 'W2' being passed without appreciation of the evidence and being not passed on merits, is also illegal. Consequently, the punishment order dated 07.01.2016 / endorsement dated 25.01.2016 and order of appeal dated 09.05.2019 / endorsement dated 13.05.2019 are hereby set aside being illegal and the workman is entitled to all consequential benefits arising from setting aside of these orders.

28. Accordingly, this issue is decided in favour of the workman /workers' union and against the management.

Issue NO. 2:

29. Onus to prove this issue is on the management.

30. Learned Law Officer contended that before approaching this Court the workman must avail the remedy of review. In the present case, the workman did not file the review application before the competent authority, therefore, the present reference is pre-mature. To my opinion, the aforesaid contention raised by Learned Law Officer is devoid of merits because it is not mandatory for the workman to avail remedy of review after decision of his appeal vide order dated 09.05.2019 /endorsement dated 13.05.2019 /Exhibit 'W2'. The workman has exhausted the remedy of appeal. On dismissal of appeal of the workman, the workers' union raised the demand notice dated 01.06.2019 against the management. The intervention of the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was called. The conciliation proceedings failed and the workers' union was advised to approach the appropriate Court at their own level for further adjudication vide failure report bearing Memo No.2936 dated 13.12.2022 of Assistant Labour Commissioner, U.T. Chandigarh.

31. Accordingly, this issue is decided against the management and in favour of the workman / workers' union.

Relief :

32. In the view of foregoing finding on the issues above, this industrial dispute is allowed. The punishment order dated 07.01.2016 / endorsement dated 25.01.2016 and order of appeal dated 09.05.2019/endorsement dated 13.05.2019 are hereby set aside and the workman is held entitled to all consequential benefits arising from setting aside of these orders. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 13.02.2024.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT
Notification

The 3rd May, 2024

No. 13/2/107-HII(2)-2024/7208.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **87/2020** dated **09.03.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

RAM MURAT, HOUSE NO.759, 3RD FLOOR, SECTOR 26, CHANDIGARH (Workman)

AND

BHAGAT SINGH & CO., SECTOR 17-A, CHANDIGARH. (Management)

AWARD

1. Ram Murat, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was working with the management since 1987 as Washerman. The workman was made member of ESI Scheme on 01.10.2009 and was allotted ESI No.6073021. The workman remained in continuous and uninterrupted employment of the management up to 2nd June, 2020 when his services were illegally & wrongly terminated by refusing work. The workman was drawing ₹ 14,500/- per months as wages. On 03.06.2020 the workman went to attend his normal duty but he was refused work by the management without assigning any reason & notice. Refusal of work, which amounts to termination, is retrenchment under Section 2(oo) of the ID Act. The management has violated Section 25F of the ID Act. No charge sheet was issued, no inquiry was held and no retrenchment compensation was paid at the time of termination. For his reinstatement the workman served upon the management a demand notice dated 12.06.2020. The management neither replied the demand notice nor took the workman back on duty. The Assistant labour Commissioner-cum-Conciliation Officer, Union Territory Chandigarh was requested for his intervention. The Conciliation Officer intervened and fixed a number of dates for amicable settlement but the management did not appear before the Conciliation Officer on any date fixed for settlement. Action of the management in terminating the services of the workman is illegal, wrongful, motivated, against the principles of natural justice and unfair labour practice.

3. During the pendency of the present industrial, on 11.03.2022, none appeared on behalf of the workman as such the present industrial dispute was dismissed in default for want of prosecution vide order dated 11.03.2022 passed by Learned Predecessor Court.

4. On 24.07.2023 the workman filed an application (registered vide MA No.6/2023) seeking restoration. MA No.6/2023 was allowed vide order dated 09.03.2024 passed in the Lok Adalat presiding over by this Court and the industrial dispute reference No.87/2020 was ordered be restored to its original number

5. On joint request, the matter was taken up in the Lok Adalat parties appeared in person along with their respective Representatives.

6. In Lok Adalat, on 09.03.2024, the workman got recorded his statement, which is reproduced as below :-

"Stated that today I have received in the Lok Adalat account payee cheque No.002345 dated 09.03.2024 for a sum of Rs.1,00,000/- (Rupees One Lac only) drawn in Punjab & Sind Bank, Branch Sector 17-B, Chandigarh from Arjun Singh - Proprietor of M/s Bhagat Singh & Co. towards full & final satisfaction of my claim. Copy of cheque is Exhibit 'C1'. Now nothing is outstanding from the management. The present industrial dispute reference may be disposed of being settled."

7. Statement of the workman is countersigned by his Representative.

8. Heard. In view of the aforesaid statement of the workman, the present industrial dispute is disposed off as settled by way of compromise. Appropriate Government be informed. File be consigned to the record room.

Sd.) . . . ,

Dated : 09.03.2024.

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT
Notification

The 3rd May, 2024

No. 13/2/104-HII(2)-2024/7210.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **26/2023** dated **12.02.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

SAVITA SHARMA W/O LATE SH. AJAY SHARMA R/O HOUSE NO.388, SECTOR 49-A,
L.B. ENCLAVE, CHANDIGARH-160047. (Workman)

AND

1. SHIVENDRA KUMAR, M/S ALANKIT LIMITED, SCO 30, SECOND FLOOR, ABOVE UNION BANK, SECTOR 33-D, CHANDIGARH - 160022, EMAIL ID: SHIVENDRAK@ALANKIT.COM
2. M/S ALANKIT LIMITED, ALANKIT HOUSE 4E/2, JHANDEWALAN EXTENSION, NEW DELHI - 110055 THROUGH ITS MANAGING DIRECTOR. EMAIL ID: HR@ALANKIT.COM, ANJANAB@ALANKIT.COM, ANKIT@ALANKIT.COM (Management)

AWARD

1. Savita Sharma, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was appointed by the management as Senior Executive effective from June 1, 2018, with Employee Code 18162, on monthly gross salary of ₹11,485/-. The employee code changed after workman was transferred to M/s Alankit Insurance Broker's Limited Emp. and then Code was 12424. During her entire employment of more than 4 years, she had received appreciation for her work, dedication and creating revenue opportunities for the management which eventually benefitted the management to increase its revenues. To her utter shock and dismay, on 03.09.2022, the workman was called by her reporting Manger - Mr. Shivendra Kumar (HOD) and he asked the workman to meet him downstairs at Company's office. Workman was heartbroken and her life shattered when he shared that "Madam Phone aaya tha MD Ka and HR (HOD) ka ki Kal Se Aapko nahi aana". After hearing this, workman asked him about this inhuman behavior of terminating an employee without providing any notice, however workman immediately rushed back without answering any questions. Workman repetitively requested him to again answer her questions as it impacted her livelihood, however management refused to answer any questions and told the workman not to come to office from tomorrow. Till date, the workman has not received any termination letter from the management and even no compensation in violation of labour laws. In addition, vide employment letter issued by the management, the management was required to give one 1 month notice in writing or one 1 month salary as compensation to the workman while terminating her services, but the management never bothered to abide by the said employment letter. The management for its ulterior motive has deliberately terminated the services of management to deprive the workman of

social security benefits - ESI, Provident Fund, Gratuity, Retrenchment Compensation and all of my other entitlements as bonus amount, reimbursement of expenses and all other amounts payable by the management. During the service period, workman's service records has always been unblemished and quite satisfactory. Neither the management ever charge- sheeted nor given any warning or intimation to the workman regarding short of omission, commission and lapses pertaining to the work and performance as a duty. Besides this, no domestic inquiry was ever conducted by the management against the workman for kind of discrepancies regarding her duty. At the time of termination of services, the company neither gave any service compensation not gave any notice pay to workman and also social security benefits. In this way, the management has violated the provisions of section 25F of the ID Act as well as violated the principles of natural justice. Due to this unfair conduct of the management, workman have suffered economic and financial loss being widow and mother of girl child and unable to meet her daily expenses. Workman being affected and harassed mentally and physically by the management, for which they are solely liable to pay compensation. The management has terminated the services of the workman arbitrarily without giving any reason, which is not permitted under law. The termination of services of the workman in this manner is against the principles of natural justice and illegal for violations of mandatory statutory provisions of Section 25F of ID Act. Even the earned wages of workman were not paid at the time of termination of her services. There was no complaint against the work & conduct of the workman during the long period of employment with management but management terminated the services of the applicant w.e.f. 03.09.2022, quite illegally, unjustifiably and without sufficient cause. No order in writing was given and any retrenchment compensation and notice pay was paid or offered at the time of termination of services of workman. The workman has received a letter dated 13.09.2022 on 26.09.2022, for notice for unsatisfactory performance and called for explanation. The workman has duly replied the said letter vide letter dated 01.10.2022. The demand notice dated 20.09.2022 was sent to the management by Speed Post and email which was received by the management. The management was requested to reinstate the workman in service with continuity of service and full back wages. On the complaint of workman made on 20.09.2022 to the Assistant Labour Commissioner, Chandigarh vide letter dated 27.12.2022 advised the workman to approach appropriate forum for the adjudication of dispute. The action of the management terminating the services of the workman is illegal and unjustified and against the mandatory provisions of Section 25F of the ID Act as the amount of retrenchment compensation and notice pay was neither paid nor offered by the management. The workman is entitled to reinstatement in service with full back wages and continuity of service. The workman has remained unemployed since termination of his services by the management despite efforts to get alternative employment. Prayer is made that the Award may be passed reinstating the workman in service with full back wages and continuity of service.

3. On notice, the management appeared through its Regional Manager Shri Shivendra Kumar and contested the claim of the workman by filing written statement on 28.04.2023, wherein preliminary objections are raised on the ground that the claim is not maintainable in the present form. The workman with sole intention to grab money unlawfully filed the captioned claim against the management which is not permissible in the eyes of law. The allegations raised by the workman are bundle of lies and far away from the truth and reality and she is not entitled for what she is claiming in her statement of claim. The workman is trying to take advantages for her own wrongs and mistakes, which makes the entire claim defective and liable to be dismissed with exemplary cost. The workman herself failed to prove / establish her allegation that she was terminated by the management. In fact, the workman herself absconded from her job from 03.09.2022 without any information or intimation to the management and this was the only reason that on 13.09.2022, the management issued a notice to the workman for her unsatisfactory performance. The workman has not approached this Tribunal with clean hands and by suppressing all the material facts filed the captioned claim against the management

and its employee to arm twist to satisfy her own greed. The workman intentionally hide the fact that she was irregular in coming to office and due to her poor and unsatisfactory performance she was warned multiple time by the management and ultimately she absconded from the work from 03.09.2022. The reason for irregular attendance & absconding of the workman was that she was pursuing LLB decree without giving proper information to the management. Hence, the workman is not entitled to get any relief from this Court. The management from its reliable sources also came to know that she has been working as Insurance Agent with code No.0243120N with Manimajra Branch, Sector 13 Chandigarh of Life Insurance Corporation (LIC) and she use to spend time most of her time to generate her own client and there is also huge possibility that while working in M/s Alankit Insurance Broker's Limited as admitted by the workman in para 1 of the statement of claim, she converted the client of the management to buy insurance policy from her and lead her performance continuously down. Despite this fact she was not terminated and vide notice dated 13.09.2022 informed about her unsatisfactory service. The workman in para 5 of her statement of claim, allegedly mentioned that management deprived the workman of social security benefits - ESI, Provident Fund, Gratuity, Retrenchment compensation and all other entitlements as bonus amount, reimbursement of expenses and all other amount payable by management. It is submitted that for the benefits towards the ESI automatically gets ended when the name of the workman is removed from the rolls of the company. Hence, it cannot be claimed. Further Provident Fund, the management has no role in this, the Workman can claim the PF amount at any point of time by her own as it does not come under the control of the management. The workman joined the company in year 2018 and had not completed 5 years and she had absconded on multiple occasions even from September, 2022. Hence, she is not entitled for Gratuity benefits. The workman in her claim alleged in para 3 of the claim that she was verbally called by reporting manager - Mr. Shivendra Kumar (HOD) on 03.09.2022 to inform that she is not required to come office from tomorrow. Though this fact is specifically denied and not admitted by the answering management but even if it is assumed to be true, then the question arise here is whether the workman has written any letter or mail to management to ask the reason or confirmation for her termination or any kind of correspondence prior to the issuance of the notice by the management on 13.09.2022, her answer would definitely be negative, which is clear enough to prove that only to cover or hide this fact, the workman narrated / cooked a frivolous story of termination dated 03.09.2022 to file the present claim. In terms of clause 13 of the Offer Letter dated 27.06.2018, absence for continuous period of 7 days would make workman to lose his / her lien on the services and same shall automatically come to an end without any notice or even intimation. In the same manner, when the workman absconded from the work from 04.09.2022 on 13.09.2022, management issued notice to her and when no response came she was removed from the rolls of the company. The workman intentionally tried to mislead the Court by saying that *"even the earned wages of workman were not paid at the time of termination of his services"* as mentioned in para 10 of the statement of claim. In this regard, it is submitted that the workman was not terminated by the management and from the ledger account with regard to the records of salary paid to the workman, it clearly appears that for the month of August 2022, September 2022 and October, 2022 workman received complete salary for the days she worked by way of online transfer to the account of the workman. Hence, it is proved that the allegation raised by the workman is false and vague. Copy of the Ledger account of the workman maintained by the company is annexed with the written statement as Annexure 'A' & 'B'. The workman has also filed an affidavit in support of her claim, at para 16 of the said affidavit, workman submitted that she remained unemployed since termination of her services by the management despite efforts to get alternative employment. It is pertinent to mention here that when workman is having LIC insurance agent code bearing No.02431230N, Manimajra, Sector 13, Chandigarh and is doing work of insurance broking. Hence, the statement of affidavit proved to be incorrect which makes the workman liable for prosecution under Section 340 of Criminal Procedure Code.

4. On merits, it is stated that the workman was appointed as Senior Executive effective from June 1, 2018 and later she was transferred to different other departments as her performance was not satisfactory and ultimately she was transferred to Alankit Insurance Broker's Limited, there workman was not performing satisfactory. The workman is having LIC insurance agent code bearing No.0243120N, Manimajra, Sector-13, Chandigarh and was more interested in building her client even in her working hours and this was the reason her working performance was not satisfactory. The management had not terminated the workman and she at her own wish ignored to come to office from 04.09.2022 without assigning any reason. The only reason the workman has not received any termination letter from the Management because the management has never terminated the workman and because of sudden absconding and working personal work at the cost of management, the workman was issued notice and informed about the unsatisfactory performance of the workman but she choose to remain abscond, finding no other option management had to remove her name from the rolls of the company. Multiple warning and intimations were given to the workman time to time and when the performance of the workman not improved she was transferred to various departments which itself is admitted by the workman. When the workman absconded from the work from 04.09.2022, management waited for around 10 days and then only the management was compelled to issue notice dated 13.09.2022 to the workman and informed about her unsatisfactory performance with a hope that she will join the work and improve her performance but she ignored to come for work even after receiving the notice. Finding no other option the management had to remove her from the roles of the company. The workman received notice dated 13.09.2022 but the management has not received any response or reply dated 01.10.2022 from workman side. The workman in a very planned manner tried to take advantage of her own wrongs and also tried to encase her absconding by putting false and illusionary allegation upon the management. The workman narrated false and illusionary statements and complaints to mislead the Assistant Labour Commissioner hence, conciliation was not arrived between the parties. Remaining averments of the claim statement are denied. Prayer is made that the claim of the workman be dismissed.

5. The workman filed replication, wherein the contents of written statement are denied as wrong except the admitted facts of the claim and the averments of the statement of claim are reiterated.

6. During pendency of the present industrial dispute, on 18.01.2024, workman got recorded her statement in the Court which is reproduced as below :-

"Stated that I do not intend to pursue my present industrial dispute. Therefore, the same may be disposed off being not pressed."

7. Heard. In view of the statement dated 18.01.2024 of the workman, the present industrial dispute reference is disposed off being not pressed. Appropriate Government be informed. File be consigned to the record room.

Sd.) . . . ,

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 12.02.2024.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT
Notification

The 3rd May, 2024

No. 13/2/111-HII(2)-2024/7260.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **112/2021** dated **22.03.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

SANJEEV KUMAR PURI S/O SH. DAVINDER KUMAR PURI, H.NO.J-3/188, GOBIND COLONY, RAJPURA, DISTRICT PATIALA. (Workman)

AND

M/S ON DOT COURIER & EXPRESS CARGO PVT. LTD., PLOT NO.27, INDUSTRIAL AREA, PHASE - II, CHANDIGARH THROUGH ITS MANAGING DIRECTOR.
(Management)

AWARD

1. Sanjeev Kumar Puri, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that on 19.11.2009 the workman was appointed in Administrative Department by the management of M/s On-Dot Courier & Cargo Ltd. Later on the management changes the name of its establishment and started its work under the name & style of M/s On-Dot Courier & Express Cargo Pvt. Ltd. All the staff including the workman started work in the new named establishment with continuity of service and all benefits intact. There was no change in the management, work place, nature of job and infrastructure etc. after the change of name of the establishment. The workman was drawing ₹18,208/- as wages per month at the time of termination which is less than the minimum rate of wages. On 01.04.2020 as usual the workman went to attend his normal duties but he was refused work by the management without assigning any reason and notice. The refusal of work which amounts to termination is retrenchment under Section 2(oo) of the ID Act. The management has also violated Section 25F of the ID Act. No charge sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. Violation of the same makes the termination void. The workman is not well versed with the law and on ill advice of someone inadvertently he served upon Mr. K. K. Sharma a demand notice dated 03.06.2020 for his reinstatement and other legal dues. He remained in continuous employment from 19.11.2009 to 31.03.2020. He had worked for more than 240 days preceding the date of termination. For his reinstatement the workman served upon the management a demand notice dated 07.03.2021. The management neither denied the contents of the demand notice nor took the workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was requested for his intervention. The Conciliation Officer intervened but the management did not appear before the Conciliation Officer, U.T. Chandigarh on any date fixed for settlement. The workman remained unemployed during the period i.e. from the date of termination to till date. The action

of the management in terminating the services of the workman is illegal, wrongful, motivated, against the principle of natural justice and unfair labour practice. Prayer is made that the workman may be reinstated with continuity of service along with full back wages and without any change in his service condition.

3. On notice issued for 01.12.2021 the management was served through Smt. Neeraj. None appeared on behalf of the management despite service. Vide order dated 01.12.2021 the management was proceeded against ex-parte.

4. In ex-parte evidence, workman Sanjeev Kumar examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 22.03.2024 Learned Representative for the workman closed ex-parte evidence on behalf of the workman.

5. I have heard the arguments of Learned Representative for the workman and perused the judicial file.

6. In order to prove its case, workman Sanjeev Kumar examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity.

7. From the evidence led by the workman, it is established that on dated 19.11.2009 the workman joined in the Administrative Department with the management of M/s On-Dot Courier and Cargo Ltd., which later on in October 2019 changed its name to M/s On-Dot Courier and Express Cargo Pvt. Ltd. At the time of change of the name of the establishment from M/s On-Dot Courier & Cargo Ltd. to M/s On-Dot Courier & Express Cargo Pvt. Ltd., the establishment remained the same and consequently the workman started working in the new named establishment i.e. M/s On-Dot Courier & Express Cargo Pvt. Ltd. with continuity of service and all the benefits intact. On 01.04.2020 his services were terminated with verbal order by the management without assigning any reason and without issuance of any notice. The workman remained in continuous service of the management from 19.11.2009 to 31.03.2020 and thus completed continuous service of more than 240 days in 12 calendar months preceding termination. Thus, workman fulfils the requirement of Section 25B of the ID Act. Once, the requirement of Section 25B of the ID Act is fulfilled, the management / employer before terminating the services is bound to comply with the conditions precedent for retrenchment as envisaged in Section 25F of the ID Act. By Section 25F of the ID Act a prohibition against retrenchment, until the conditions prescribed by that section are fulfilled is imposed. For better appreciation Section 25F of the ID Act is extracted herein below :-

"25F. Conditions precedent to retrenchment of workmen.-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."

8. The workman has specifically alleged that before termination of his services neither any charge sheet was issued nor any inquiry was held and he was not paid retrenchment compensation at the time of termination. In the present case, despite service of notice none has appeared on behalf of the management to prove compliance of the conditions laid down in Section 25F of the ID Act. The testimony of workman / AW1 has gone un-rebutted and un-challenged as none appeared on behalf of the management to contest the claim statement and preferred to be proceeded against ex-parte. There is no reason to disbelieve the evidence led by the workman.

9. In view of the reasons recorded above, the termination of services of the workman is illegal being in violation of Section 25F of the ID Act and the same is hereby set aside.

10. Workman has specifically pleaded that from the date of termination till date he has remained unemployed.

11. In view of the discussion made above, the workman is held entitled to reinstatement with continuity of service along with 50% back wages. Accordingly, this industrial dispute is ex-parte allowed. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 22.03.2024.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT
Notification

The 6th May, 2024

No. 13/2/112-HII(2)-2024/7299.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **113/2021** dated **22.03.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

KAMLESH MAURYA S/O SH. BALI NATH MAURYA, H.NO.68, VASHALI ENCLAVE,
PHASE - I, BALTANA, DISTRICT MOHALI (Workman)

AND

M/S ON DOT COURIER & EXPRESS CARGO PVT. LTD., PLOT NO.27, INDUSTRIAL
AREA, PHASE - II, CHANDIGARH THROUGH ITS MANAGING DIRECTOR. (Management)

AWARD

1. Kamlesh Maurya, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that on 01.03.2006 the workman was appointed as Operator by the management of M/s On-Dot Courier & Cargo Ltd. Later on the management changes the name of its establishment and started its work under the name & style of M/s On-Dot Courier & Express Cargo Pvt. Ltd. All the staff including the workman started work in the new named establishment with continuity of service and all benefits intact. There was no change in the management, work place, nature of job and infrastructure etc. after the change of name of the establishment. The workman was drawing ₹ 9,095/- as wages per month at the time of termination which is less than the minimum rate of wages. On 01.04.2020 as usual the workman went to attend his normal duties but he was refused work by the management without assigning any reason and notice. The refusal of work which amounts to termination is retrenchment under Section 2(oo) of the ID Act. The management has also violated Section 25F of the ID Act. No charge sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. Violation of the same makes the termination void. The workman is not well versed with the law and on ill advice of someone inadvertently he served upon Mr. K. K. Sharma a demand notice dated 03.06.2020 for his reinstatement and other legal dues. He remained in continuous employment from 01.03.2006 to 31.03.2020. He had worked for more than 240 days preceding the date of termination. For his reinstatement the workman served upon the management a demand notice dated 07.03.2021. The management neither denied the contents of the demand notice nor took the workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was requested for his intervention. The Conciliation Officer intervened but the management did not appear before the Conciliation Officer, U.T. Chandigarh on any date fixed for settlement. The workman remained unemployed during the period i.e. from the date of termination to till date. The action of the management in terminating the services of the workman is illegal, wrongful, motivated, against the principle of natural justice and unfair labour practice. Prayer is made that the workman may be reinstated with continuity of service along with full back wages and without any change in his service condition.

3. On notice issued for 02.12.2021 the management was served through Smt. Neeraj. None appeared on behalf of the management despite service. Vide order dated 02.12.2021 the management was proceeded against ex-parte.

4. In ex-parte evidence, workman Kamlesh Maurya examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 22.03.2024 Learned Representative for the workman closed ex-parte evidence on behalf of the workman.

5. I have heard the arguments of Learned Representative for the workman and perused the judicial file.

6. In order to prove its case, workman Kamlesh Maurya examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity.

7. From the evidence led by the workman, it is established that on dated 01.03.2006 the workman joined as Operator with the management of M/s On-Dot Courier and Cargo Ltd., which later on in October 2019 changed its name to M/s On-Dot Courier and Express Cargo Pvt. Ltd. At the time of change of the name of the establishment from M/s On-Dot Courier & Cargo Ltd. to M/s On-Dot Courier & Express Cargo Pvt. Ltd., the establishment remained the same and consequently the workman started working in the new named establishment i.e. M/s On-Dot Courier & Express Cargo Pvt. Ltd. with continuity of service and all the benefits intact. On 01.04.2020 his services were terminated with verbal order by the management without assigning any reason and without issuance of any notice. The workman remained in continuous service of the management from 01.03.2006 to 31.03.2020 and thus completed continuous service of more than 240 days in 12 calendar months preceding termination. Thus, workman fulfils the requirement of Section 25B of the ID Act. Once, the requirement of Section 25B of the ID Act is fulfilled, the management / employer before terminating the services is bound to comply with the conditions precedent for retrenchment as envisaged in Section 25F of the ID Act. By Section 25F of the ID Act a prohibition against retrenchment, until the conditions prescribed by that section are fulfilled is imposed. For better appreciation Section 25F of the ID Act is extracted herein below :-

"25F. Conditions precedent to retrenchment of workmen.-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."

8. The workman has specifically alleged that before termination of his services neither any charge sheet was issued nor any inquiry was held and he was not paid retrenchment compensation at the time of

termination. In the present case, despite service of notice none has appeared on behalf of the management to prove compliance of the conditions laid down in Section 25F of the ID Act. The testimony of workman / AWI has gone un-rebutted and un-challenged as none appeared on behalf of the management to contest the claim statement and preferred to be proceeded against ex-parte. There is no reason to disbelieve the evidence led by the workman.

9. In view of the reasons recorded above, the termination of services of the workman is illegal being in violation of Section 25F of the ID Act and the same is hereby set aside.

10. Workman has specifically pleaded that from the date of termination till date he has remained unemployed.

11. In view of the discussion made above, the workman is held entitled to reinstatement with continuity of service along with 50% back wages. Accordingly, this industrial dispute is ex-parte allowed. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 22.03.2024.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 3rd May, 2024

No.13/2/99-HII(2)-2024/7204.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **13/2023** dated **05.02.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

CHANDIGARH GOVT. TRANSPORT WORKER UNION, CTU CHANDIGARH (REGD. & RECOGNIZED) THROUGH ITS PRESIDENT AND SECRETARY ON BEHALF OF SH. KULDEEP SINGH - CONDUCTOR NO.731, CTU, CHANDIGARH (Workman)

AND

THE DIVISIONAL MANGER, CHANDIGARH TRANSPORT UNDERTAKING, U.T.
CHANDIGARH. (Management)

AWARD

1. The Chandigarh Govt. Transport Worker's Union, CTU Chandigarh (*here-in-after referred "workers' union"*) has presented industrial dispute under Section 2(k) of the Industrial Disputes Act, 1947 (*here-in-after in short called "ID Act"*).

2. Briefly stated the averments of claim statement are that Kuldeep Singh - Conductor No.731, CTU, Chandigarh (*here-in-after referred "workman"*) was issued a charge sheet as per charge sheet dated 16.09.2013 on the basis of false allegations which was duly replied by the workman. The punishing authority without appreciating the reply of the workman ordered for holding a regular inquiry. The Inquiry Officer did not conduct the inquiry in a fair & proper manner and full opportunity to defend was not given to the workman. Though there was no evidence or other material on record against the workman, in spite of that the Inquiry Officer gave findings against the workman based on hear-say evidence which is not supported by other evidence. It is settled law that without corroboration and other evidence on record, the hear-say evidence is not admissible even in departmental inquiry. The findings of the Inquiry Officer are perverse. On the basis of the inquiry report, the punishing authority without considering the representation of the workman passed punishment order dated 01.12.2017 / 02.01.2018 whereby four increments of workman have been stopped with cumulative effect and further remaining pay of suspension period was denied to the workman. The order of punishing authority is non-speaking and no findings have been given in support of his conclusion. Against the order of punishment, workman filed an appeal which was also dismissed vide order dated 14.06.2019 / 20.06.2019 without considering the grounds of appeal by non-speaking order. The inquiry report, punishment order dated 01.12.2017 / 02.01.2018 and order of appellate authority dated 14.06.2019 / 20.06.2019 deserves to be set aside on the following grounds amongst others :-

- a) The workman was performing his duties properly and had issued the tickets to all the passengers, who were travelling in the bus at that time. Checking staff took away the ticket box and way bill of the workman before start of checking and without checking the bus properly took away unpunched tickets worth ₹ 640/- and gave a false note of embezzlement of ₹ 640/- on the way bill without giving detailed note on the way bill, which was mandatory as per instructions dated 13.12.2001.
- b) As per rules & instructions of the department, in order to avoid false implication of conductors, it is made mandatory to give detailed note on the way bill regarding number of passengers found

without tickets, their place of boarding and alighting from the bus, value of tickets per passengers and total passengers travelling in the bus. But nothing is mentioned on the way bill except the amount of ₹ 640/-. Therefore, it is clear that after taking un-punched tickets false report has been made subsequently as per their convenience. It is settled law that the departmental inquiries are quasi-judicial and quasi-criminal in nature and benefit of doubt always go to delinquent in such like circumstances even in departmental inquiries also.

- c) The checking staff has violated the instructions dated 03.03.1987 and 13.12.2001 of the department-CTU, compliance of which has been made mandatory to the checking staff. In these instructions, it is mandatory that the checking staff must record the statements of passengers alleged to be found without tickets from whom the conductor is alleged to have taken the money and had not issued tickets. If the statement of the passenger is not recorded then they have to give reasons for the same. But in this case no statement of passenger was recorded and no reasons have been given for not recording statements of passengers. It is settled law that in the absence of statement of passengers recorded by Inspector at the spot and then before Inquiry Officer, the only statement of Inspectors is hear-say and conductor cannot be held guilty on the sole statement of Inspectors which is not corroborated any other evidence on record. This aspect of the defence of the workman has not been considered at all by the Inquiry Officer, by the Punishing Authority as well as by the Appellate Authority.
- (d) The defence of the workman that Gurvinder Singh - Inspector was on duty in the area of Chandigarh, Mohali and Panchkula but he checked the bus at Dayala Chowk i.e. out of his duty area, which shows the biasness of the Inspector but this aspect has not been taken in to consideration. The said Inspector had earlier also made false complaints against the workman for the reasons best known to him.
- (e) The workman had not given un-punched tickets voluntarily as stated in the report and charge sheet but the same were taken away by the Inspectors without consent of workman. Inspectors themselves had admitted that before checking the bus ticket box and way bill of the workman were taken in possession by them and they took un-punched tickets. The workman did not admit his fault at any point of time.
- (f) The workman has given his own defence statement which was supported by one more defence witness, who was at the spot at the time of checking, but Inquiry Officer has not discussed the same and no reasoning has been given for not taking into consideration the statement of defence and defence witness while submitting inquiry report by the Inquiry Officer, by the Punishing Authority before passing punishment order and by Appellate Authority before dismissing the appeal.
- (g) As per the instructions stated above, it was mandatory duty of the checking staff to check the cash of the conductor to find out excess payment in his possession. In this case cash of workman was not checked, especially when huge amount is alleged to have been embezzled and large number of passengers are alleged to have been travelling without tickets.
- (h) The report cannot be considered because the report is alleged to be made by Shri Rakesh Kumar Sharma but he has specifically stated before Inquiry Officer that he has not checked the bus.
- (i) There is a great contradictions in the statements of Inspectors given during inquiry proceedings, as pointed out by the workman in representation dated 08.11.2014 against the inquiry report but the same has not been appreciated at all by the Inquiry Officer, by the Punishing Authority and Appellate Authority. In the report it is stated that bus was checked by all the three Inspectors but during inquiry Shri Rakesh Kumar Sharma - Inspector stated that he has not checked the bus. There is also difference statement regarding number of passengers found without tickets. One witness is saying 10 passengers and another has stated 3 passengers but in the charge sheet it is mentioned 9 passengers.

- (j) The demands were raised by the workers' union of CTU to curb the tendency of checking staff of falsely implicating the Conductors on the alleged misconduct of not issuing tickets to the passengers after collecting fares. After the modalities were discussed, thereafter agreement between Representatives of Union and management was arrived at and then instructions / orders dated 03.03.1987 and 13.12.2001 were issued by management to be followed by the checking staff.
- (k) In case of workman these instructions have not been followed at all. No details of passengers found without tickets given on the way bill, there is no detailed note given on the way bill. Cash of the workman was not checked.
- (l) Only reason given for holding the workman guilty is that the workman admitted his guilt and gave un-punched tickets, though it is specific case of workman that un-punched tickets were taken by the Inspectors without his consent, which fact has now proved on record by statements of Inspectors themselves before the Inquiry Officer. Inspectors have admitted in the cross-examination before the Inquiry Officer that ticket box was with them and they took away un-punched tickets from the ticket box.
- (m) The findings against the workman are totally perverse and wrong. There is no evidence on record to hold the workman guilty except the bald statements of Inspectors.
- (n) The workman has been held guilty only on the basis of alleged admission, as stated by Inspectors in the report and in the charge sheet. The workman has denied the same.
- (o) The Inquiry Officer, Punishing Authority and Appellate Authority have not considered the statements of Inspectors as recorded before the Inquiry Officer. Only part of statement which goes against the workman have been noticed and the statements to an extent which disprove the charges have not been discussed at all, though as per law entire evidence was to be taken into consideration and appreciated in inquiry proceedings.
- (p) The workman made a detailed representation against the findings of the inquiry report but the same has not been considered at all by the Punishing Authority and no reasoning has been given to ignore the same. The order of Punishing Authority is non-speaking in nature and against the law of natural justice as well as against the Punishment & Appeals Rules. The conclusion of the Inquiry Officer as well as Punishing Authority is not supported by any reasoning.
- (q) The order of the Appellate Authority is illegal and in violation of Rule 19 of Punjab Civil Services (Punishment & Appeal) Rules, 1970.
- (r) The Appellate Authority has taken into consideration the past conduct without giving an opportunity of hearing.
- (s) The Appellate Authority has not considered the grounds of appeal at all while deciding the appeal which was mandatory.

The workman requested many times to withdraw the illegal orders but the management failed to withdraw the same. Hence, the workers' union raised the demand notice. Prayer is made that reference may be accepted and the illegal order of punishment dated 01.12.2017 / 02.01.2018 and order of Appellate Authority dated 14.06.2019 / 20.06.2019 may be set aside and all the monetary benefits may be released to the workman along with interest @12% per annum which were withheld by virtue of these illegal orders.

3. On notice, management contested the statement of claim by filing written reply on 17.03.2023 wherein preliminary submissions are made that present claim statement deserves to be dismissed on the ground that the workman is hiding the material facts from this Hon'ble Court as the workman is a habitual offender. He has been awarded various punishments in fraud committed by him at various occasions. History sheet in respect of Shri Kuldeep Singh - C.No.731 is as follows :-

Sr. No.	Punishment	Remarks
1.	Placed under suspension with immediate effect vide O/o 760 dated 16.01.1991 and reinstated with immediate effect without prejudice to the departmental inquiry pending against him vide O/o 824 dated 29.01.1991	Fraud of ₹ 2/-
2.	Warned to be careful in future vide O/o dated 19.08.1991	
3.	Warned to be careful in future vide O/o dated 12.08.1991	
4.	Placed under suspension with immediate effect vide O/o 661 dated 05.11.1992 and reinstated with immediate effect without prejudice to the departmental inquiry pending against him vide O/o 1147 dated 28.12.1992 and two increments stopped with cumulative effect and his suspension period limited to the grant of subsistence allowance only vide order 1152 dated 18.10.1993.	Fraud of ₹ 56/-
5.	Placed under suspension with immediate effect vide O/o 331 dated 01.07.1996 and reinstated with immediate effect without prejudice to the departmental inquiry pending against him vide O/o 403 dated 14.08.1996 and three increments stopped with cumulative effect and his suspension period limited to the grant of subsistence allowance only vide order 4011 dated 31.01.2005.	Fraud of ₹ 138/-
6.	Placed under suspension with immediate effect vide O/o 331 dated 09.05.1997 and reinstated with immediate effect without prejudice to the departmental inquiry pending against him vide O/o 369 dated 19.05.1997 and one increment stopped with cumulative effect and his suspension period limited to the grant of subsistence allowance only vide order 241 dated 07.06.2001.	Fraud of ₹ 36/-
7.	Placed under suspension with immediate effect vide O/o 590 dated 19.09.1997 and reinstated with immediate effect without prejudice to the departmental inquiry pending against him vide O/o 689 dated 29.10.1997 and one increment stopped with cumulative effect and his suspension period limited to the grant of subsistence allowance only vide order 1055 dated 22.01.2001	Fraud of ₹ 24/-
8.	Placed under suspension with immediate effect vide O/o 898 dated 10.08.1998 and reinstated with immediate effect without prejudice to the departmental inquiry pending against him vide O/o 983 dated 31.08.1998 and one increment stopped with cumulative effect and his suspension period limited to the grant of subsistence allowance only vide order 442 dated 15.05.2000.	Fraud of ₹ 16/-

9.	Placed under suspension with immediate effect vide O/o 2349 dated 16.07.1999 and reinstated with immediate effect without prejudice to the departmental inquiry pending against him vide O/o 3118 dated 02.11.1999 and two increments stopped with cumulative effect and his suspension period limited to the grant of subsistence allowance only vide order 698 dated 19.10.2000.	Fraud of ₹ 76/-
10.	Placed under suspension with immediate effect vide O/o 208 dated 27.03.2000 and reinstated with immediate effect without prejudice to the departmental inquiry pending against him vide O/o 287 dated 24.04.2000 and two increments stopped with cumulative effect and his suspension period limited to the grant of subsistence allowance only vide order 396 dated 18.05.2006.	Fraud of ₹ 24/-
11.	Placed under suspension with immediate effect vide O/o 697 dated 08.08.2000 and reinstated with immediate effect without prejudice to the departmental inquiry pending against him vide O/o 839 dated 29.09.2000 and one increment stopped with cumulative effect and his suspension period limited to the grant of subsistence allowance only vide order 354 dated 08.05.2005.	Fraud of ₹ 40/-
12.	Service censured vide O/o 2570 dated 02.07.2002	Fraud of ₹ 10/-
13.	Service censured vide O/o 512 dated 18.02.2003	Fraud of ₹ 20/-
14.	Placed under suspension with immediate effect vide O/o 497 dated 06.10.2003 and reinstated with immediate effect without prejudice to the departmental inquiry pending against him vide O/o 580 dated 04.12.2003 and one increment stopped with cumulative effect and his suspension period limited to the grant of subsistence allowance only vide order 39 dated 04.01.2010.	Missing 2240 Km. financial loss ₹ 4,39,261/-
15.	Warned to be careful in future vide O/o 1273 dated 24.06.2004.	Fraud of ₹ 12/-
16.	Placed under suspension with immediate effect vide O/o 81 dated 30.03.2009.	
17.	Reinstated with immediate effect without prejudice to the departmental inquiry pending against him vide O/o 136 dated 25.05.2009 and two increments stopped with cumulative effect and his suspension period limited to the grant of subsistence allowance only vide order 5002 dated 16.08.2011.	Fraud of ₹ 240/-
18.	One increment stopped without cumulative effect vide order No.103 dated 04.02.2010.	Fraud of ₹ 36/-
19.	Placed under suspension with immediate effect vide O/o 202 dated 25.10.2010 and reinstated with immediate effect without prejudice to the departmental inquiry pending against him vide O/o 246 dated 25.01.2011 and two increments stopped with cumulative effect and his suspension period limited	Fraud of ₹ 300/-

	to the grant of subsistence allowance only vide order 4415 dated 17.07.2014.	
20.	Placed under suspension with immediate effect vide O/o 55 dated 22.08.2013 and reinstated with immediate effect without prejudice to the departmental inquiry pending against him vide O/o 163 dated 24.09.2013 and four increments stopped with cumulative effect and his suspension period limited to the grant of subsistence allowance only vide order 169 dated 02.01.2018.	Fraud of ₹ 640/-
21.	Placed under suspension on 19.03.2019 vide O/o DT/CTU/2019/133 dated 19.03.2019 and reinstated vide Order No.230/TA/HO/CTU dated 23.05.2019	Case of grave misconduct (84 bottles of wine of various band vide FIR No. 95 dated 15.03.2019)

The facts submitted by the workman are *supprescio veri* and *exprescio falsi* to the extent that the workman has completely suppressed the true and material facts. He has approached this Hon'ble Industrial Tribunal-cum-Labour Court with unclean hands. The workman has not availed the remedy of review as available under Rule 21 which is reproduced as below :-

"21. Review- (1) Notwithstanding anything contained in these rules -

- i) the Governor; or*
- ii) the Appellate Authority, within six months of the orders proposed to be reviewed; or*
- iii) any other authority, specified in this behalf by the Governor by a general or special orders, and within such time as may be prescribed in such general or special orders;*

may at any time, either on his or its own motion or otherwise call for records of any inquiry and review any orders made under these rules or under the rules repealed by Rule 25 from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the commissioner where such consultation is necessary and may -

- a) confirm, modify or set aside the order; or*
- b) confirm, reduce, enhance or set aside the penalty imposed by the other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or*
- c) remit the case to authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or*
- d) pass such other orders as it may deem fit:*

Provided that no order imposing or enhancing any penalty shall be made by any Reviewing Authority unless the Government employee concerned have been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of Rule 5 or to enhance the penalty imposed by the order sought to be reviewed to any to enhance the penalty specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 8 and except after consultation with the Commission, where such consultation is necessary."

4. It is further stated that penalty was lawfully imposed by the Disciplinary Authority and upheld by the Appellate Authority and has been imposed on the proved misconduct. The workman was charge-sheeted on the basis of report made by the checking staff. The workman was on duty with bus No.CH-01-G-7513 on 21.08.2013 as Conductor on route No.131 from Chandigarh to Katra. The bus was checked by the Inspectorate Staff at Dayha chowk. During the course of checking, it was found that 5 passengers were travelling without ticket, who had boarded the bus from Pathankot to Jammu and paid ₹ 400/- @ ₹ 80/- each as fare to the workman but it is the workman who had not issued tickets to them in spite of collecting the fare from them. Further, 4 more passengers were found without ticket who were travelling from Lakhanpur to Jammu and had paid ₹ 240/- @ ₹ 60/-each as fare to the workman and the workman had not issued tickets to these passengers also, in spite of the fact that he had collected full fare from them. The inspectorate staff tried to charge 10 times fare from without ticket passengers but they told that they had already paid full fare to the workman and the workman had not issued tickets to them. The workman admitted his fault in presence of passengers by giving un-punched tickets to the checking staff and by putting signatures on the way bill. In this way, the workman is guilty of misappropriation of ₹ 640/- from the Government Revenue and hence he was charge-sheeted. The workman was placed under suspension vide order No.155 dated 22.08.2013 and reinstated into service vide order No.163 dated 24.09.2013. The workman was charge-sheeted vide office Memo No.10123 dated 16.09.2013 for misappropriation of ₹ 640/- by way of not issuing tickets to 9 passengers. Further, on 14.10.2013 Shri Kuldeep Singh - C.No.731 submitted his reply to the charge sheet in which he denied the charges levelled against him. The reply to charge sheet was duly considered by the competent authority, which was not found satisfactory. The competent authority ordered to hold a regular departmental inquiry against the workman by appointing an Inquiry Officer vide office order endorsement No.132/PO/EO/2016 dated 24.08.2016 to enquire into the charges framed against the workman. The Inquiry Officer submitted his findings wherein the charges levelled against the workman stand proved vide Memo No.10123/TA-I/HO/CTU/2013 dated 16.09.2013. The competent authority considered and agreed with the findings submitted by the Inquiry Officer and a copy of inquiry report was supplied to the workman vide Memo No.16018/DT/HOD/TA-I, II, III/CTU/2017 dated 23.10.2017 to make representation against the same, if any. The workman submitted reply to the inquiry report on 08.11.2017 and requested that he may be afforded with an opportunity of personal hearing by the competent authority before taking an appropriate decision on the inquiry report in question. On 01.12.2017, the workman had been called in connection with Memo No.16018 dated 23.10.2017 already issued to him. The workman was confronted with material facts on record and the charges levelled against him. He was listened to carefully. During the personal hearing the workman did not say anything more than what he had said earlier and requested that a lenient view may be taken against him and assured that in future he would perform his duties diligently and honestly. The competent authority duly considered the inquiry report and facts of the case. The Inquiry Officer afforded proper and reasonable opportunity to the workman to defend the case. The competent authority had gone through the past service record of the workman and found the same unsatisfactory. The record of the workman showed that he is a habitual offender and has little regard for duty towards service. The workman had committed several offences while performing his duty and punished many times for the same. The workman did not mend his style of working. The competent authority after considering all the facts of the case ordered to stop 4 increments of the workman with cumulative effects and his suspension period w.e.f. 22.08.2013 to 23.09.2013 was ordered to be limited to the grant of subsistence allowance vide office order dated 01.12.2017 / 02.01.2018. The workman filed an appeal before the Appellate Authority against the punishment order dated 01.12.2017 / 02.01.2018 which was dismissed by the Appellate Authority vide order dated 14.06.2019 / 20.06.2019 being devoid of any merits. The operative para of order dated 14.06.2019 / 20.06.2019 is as follows :-

"That during the course of hearing, the appellant had nothing to say except a request to take sympathetic and lenient view and further assured that he would not commit any misconduct in future. On the contrary, the representatives on behalf of CTU produced the service record of the delinquent official whereby it revealed that since 1991 upto the present charge-sheet, several punishment were imposed upon the appellant on ground of several misconducts for more than 32 times. In reply to this the appellant failed to produce any concrete evidence which can either controvert the findings of the authority or support the contention of the applicant. On hearing the appellant in person and upon perusal of

record, it reveals that several punishments had already been imposed upon him on several occasions on account of his misconduct. In view of his service record, it is apparent that the competent authority had already taken lenient view while passing the impugned order dated 01.12.2017 and no further leniency deserves to be taken in the instant case. Hence do not find any infirmity in order dated 01.12.2017 passed by the Director Transport, U.T. Chandigarh (CTU). Consequently the present appeal is dismissed being devoid of any merits."

5. Further on merits, it is stated that the checking staff duly recorded their note on the way bill. Not only the checking staff has mentioned their note on the way bill about the misappropriation of ₹ 640/- but the checking staff also made a detailed report to the concerned authority. Hence, the charge sheet issued to the workman. Although departmental inquiries are quasi-judicial in nature yet the technical rules of CPC and Evidence Act are not applicable. The office had issued instructions dated 03.03.1987 and 13.12.2001 with regard to checking of cash of the Conductor and recording of statements of without ticket passengers but these instructions are not directory and these are only advisory to the checking staff and there is no need to check the cash of the conductor and record the statements of without ticket passengers when a conductor admits his fault. In this case, the workman has duly admitted his fault before the checking staff in the presence of passengers by giving un-punched tickets to the checking staff and by putting signatures on the way bill, which is on the record. Now the workman in this situation cannot take shelter of aforesaid instructions. The statements of Inspectors are not hear-say rather based on the facts and circumstances. The Inspectors deposed in their statement what role they have performed during the course of checking. The Inquiry Officer has recorded his findings whereby the workman was held guilty after consideration of facts, documents, records and statements of all the witnesses of the prosecution and defence as well. The inquiry proceedings were conducted by the Inquiry Officer after adopting the due procedure of law wherein not only evidence of prosecution was recorded but also evidence of defence was recorded. The checking staff have performed their duty in a fair manner. The workman has concocted story only to save his skin as the workman has never made complaint against the checking staff before the competent authority at any point of time. It is specifically denied as wrong that report was made only by Shri Rakesh Kumar Sharma rather the report was made against the workman by all the Inspectors of the checking staff including S/Sh. Gurvinder Singh and Nirmal Singh. It is well settled law that strict rules of evidence are not applicable to the departmental inquiry proceedings. The only requirement of law is that the allegation against the delinquent official should be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at findings upholding the charges against the delinquent official. The Appellate Authority took into consideration the past conduct of the workman before passing the order dated 14.06.2019 / 20.06.2019 the workman was given proper opportunity of hearing before passing the order dated 14.06.2019 / 20.06.2019. Further similar stand is taken as taken in the preliminary submissions. Rest of the averments of claim statement are denied as wrong and prayer is made that the claim statement may be dismissed being devoid of merits and time barred.

6. The workers' union filed rejoinder wherein it is stated that this Court is competent to interfere and set aside the findings of the departmental proceedings under Section 11A of the ID Act. Only those Organs of the Government does not fall under the ID Act who were performing sovereign functions of the State. Therefore, CTU falls under the ID Act and the present reference is maintainable. The punishment orders as mentioned in the history sheet have no relevancy with the present dispute. Rest of the contents of the written reply except admitted facts are denied as wrong and averments of claim statement are reiterated.

7. From the pleadings of the parties, following issues are framed vide order dated 16.05.2023 :-

1. Whether the punishment order dated 01.12.2017 / 02.01.2018 and order of Appellate Authority dated 14.06.2019 / 20.06.2019 are illegal ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled for all the monetary benefits which were withdrawal on account of punishment orders along with interest as prayed for ? OPW
3. Whether the claim statement is not maintainable being pre-mature ? OPM

4. Whether the inquiry was conducted in a just and fair manner ? OPM
5. Relief.

8. In evidence, the workers' union examined workman Kuldeep Singh as AW1, who tendered his affidavit Exhibit 'AW1/A' along with copies of documents Exhibit 'W1' to Exhibit 'W5'.

Exhibit 'W1' is punishment order dated 01.12.2017 / 02.01.2018.

Exhibit 'W2' is appeal dated 09.03.2018 against the punishment order dated 01.12.2017 / 02.01.2018.

Exhibit 'W3' is copy of order dated 14.06.2019 passed in appeal by the Appellate Authority in appeal No. 07/18-CTU.

Exhibit 'W4' is copy of instructions dated 13.12.2001 passed by Divisional Manager, CTU.

Exhibit 'W5' is instructions dated 03.03.1987 passed by General Manager, CTU, Chandigarh.

9. On 27.10.2023 workman closed his evidence in affirmative.

10. On the other hand, management examined MW1 Gurvir Kaur - Junior Assistant, CTU Chandigarh, who tendered her affidavit Exhibit 'MW1/A'. On 05.01.2024 Learned Law Officer for the management closed oral evidence on behalf of the management. On 30.01.2024 Learned Law Officer for the management closed documentary evidence on behalf of the management.

11. I have heard the arguments of Learned Representative for the workers' union and Learned Law Officer for the management and perused the judicial file. My issue-wise findings are as below :-

Issues No.1, 2 & 4 :

12. All these issues are taken up together being inter-connected and in order to avoid repetition of discussion.

13. Onus to prove issue No.1 & 2 is on the workman / workers' union and onus to prove issue No.4 is on the management.

14. Under these issues, the workman Kuldeep Singh examined himself as his own witness as AW1 and tendered his affidavit Exhibit 'AW1/A' wherein he has deposed that the averments of claim statement in toto, which are not reproduced for the sake of brevity. AW1 has supported his oral version with documents Exhibit 'W1' to Exhibit 'W5'.

15. On the other hand, management examined MW1 Gurvir Kaur - Junior Assistant, CTU, Chandigarh who vide her affidavit Exhibit 'MW1/A' deposed the entire contents of the written reply which are not reproduced here to avoid repetition.

16. From the oral as well as documentary evidence led by the parties, it comes out that admittedly workman Kuldeep Singh is employed as Conductor No.731 with the management / CTU. The disciplinary proceedings were initiated against the workman on the basis of written report dated 22.08.2013 jointly made by S/Sh. Gurvinder Singh-I - Inspector, Nirmal Singh - Inspector and Rajesh Kumar Sharma - Inspector regarding checking of Bus No.CH-01-G-7513 Route No.131 Chandigarh to Katra, in which Kuldeep Singh - C.No.731 was performing the duty of Conductor. The report dated 22.08.2013 is as below :-

"We checked the above Bus at Dayala chowk and found that No.1 Five passengers were travelling without tickets from Pathankot to Jamu. The Conductor collected the full fare Rs.400/- (Rs.80/- each) from the said passengers. But did not issued the tickets to them. No. 2 Four passengers were travelling from Lakhna Pur to Jamu without tickets. The conductor did not issued the tickets to them also and collected the full fare Rs.240/- (Rs.60/- each) from the said passengers. We asked to all the Nine passengers for ten time of the fare. But the passengers told us that they had already paid full fare Rs.400 + 240 to the Conductor. The Conductor admitted his fault in the presence of the passengers and gave us unpunch tickets and signed on the Way Bill Note. In this way Conductor No.731

defrauded the Rs.400+240=640 from the Govt. Revenue. Report is submitted for Necessary action please."

17. The facts remained undisputed between the parties that the workman was charge-sheeted as per charge sheet dated 16.09.2013 to which the workman filed reply dated 14.10.2013 and the departmental inquiry was conducted by Shri Sanjeev Jindal - Additional District & Session Judge (Retd.) being Inquiry Officer. In the inquiry proceedings statement of prosecution witnesses i.e. PW1 Shri Nirmal Singh - Inspector, PW2 Shri Gurvinder Singh-I - Inspector and PW3 Shri Rakesh Sharma - Inspector were recorded. The opportunity to cross-examine PWs was granted to the delinquent official (*here-in workman*). The delinquent official in defence evidence examined himself as DW1 and examined DW2 Shri Bahal Singh - Driver No.698, who was driving the bus No.CH-01-G-7513 on 21.08.2013 when the bus was checked. Thereafter, the Inquiry Officer prepared the inquiry report dated 17.10.2016 wherein he concluded that the departmental has successfully proved all the charges against the conductor and that being so the conductor is held guilty of all the charges as have been levelled against him in the charge sheet in question. Copy of the inquiry report was supplied to the workman. The workman filed reply dated 08.11.2017 to the inquiry report. The Punishing Authority i.e. Shri Amit Talwar - PCS, Divisional Manager, CTU and Director Transport, U.T. Chandigarh gave personal hearing to the workman and passed punishment order dated 01.12.2017 bearing endorsement No.169/EAC-III/CTU-II/2017 dated 02.01.2018 whereby it is ordered to stop four increments with cumulative effect of Shri Kuldeep Singh - Conductor No.731 and his suspension period be limited to the grant of subsistence allowance only. The workman filed appeal against the punishment order and the appeal was dismissed being devoid of merit by the Appellate Authority Dr. Ajay K. Singla, IAS, Secretary Transport, Chandigarh Administration vide order dated 14.06.2019 bearing endorsement No.0007/2018-CTU(R&J)2019/9749 dated 20.06.2019.

18. Learned Representative for the workers' union argued that the workers' union have assailed at the order of punishment and order of appeal on the ground that both the orders are non-speaking as orders are not supported with findings. The material discrepancies between the statements of prosecution witnesses examined before the Inquiry Officer and the defence given by the workman has not been considered at all. The report of the inspectorate staff forming basis of the charge sheet is false. The inspectorate staff did not comply with the mandatory instructions dated 03.03.1987 and 13.12.2001 issued by the department of CTU. Besides, Gurvinder Singh - I, Inspector was on duty in the area of Chandigarh, Mohali and Panchkula, but he checked the bus beyond his jurisdiction Dayha chowk. The workman never admitted his fault, as alleged by the inspectorate staff. The workman has contested the allegations levelled in the charge sheet from the very beginning. Before checking of bus the inspectorate staff forcibly taken into possession the ticket box and way bill of the workman and thereafter took un-punched tickets. The previous conduct of the workman cannot be taken into consideration unless the same is made part of the charge sheet.

19. On the other hand, it is argued by Learned Law Officer argued that the Inquiry Officer has given the inquiry report and the Punishing Authority and Appellate Authority passed the impugned orders after appreciating the evidence of the prosecution as well as defence evidence recorded before the Inquiry Officer and after taking into consideration the previous conduct of the workman as fully detailed in the history sheet mentioned in para 1 of written reply. The impugned orders are speaking and well reasoned.

20. In the judgment of Hon'ble High Court of Punjab & Haryana reported in **2007(7) SCT 372** titled as **Punjab National Bank, Kurukshetra Versus Central Government Industrial Tribunal-cum-Labour Court, New Delhi & Another** referred by Learned Representative for the workers' union it has been held that after introduction of Section 11A of ID Act, 1947, Tribunal has the power to re-appraise the evidence led to domestic inquiry. In para 10 of judgment of Hon'ble High Court of Madras reported in **2022(4) SCT 476** titled as **E. Mani Versus The Managing Director, Tamil Nadu State Transport Corporation (Coimbatore Div-I) Ltd. & Others**, referred Learned Representative for workers' union, it has been held as under :-

"10. In the light of aforesaid decisions and considering the scope of Section 11A of the ID Act, the Labour Court ought to have re-appreciate the evidence in the domestic inquiry, as well evidence before it and then rendered its findings. Having not undertaken such exercise of re-appreciating the evidences and arriving at a conclusion, the proper recourse would be to remit the matter back to the Labour Court for reconsideration."

21. The law laid down in the judgements referred by Learned Law Officer reported in *AIR 1989 SC 1185* titled as *Union of India Versus Parmanand*; *AIR 1991 SC 2407* titled as *Bank of India & Another Versus Degala Suryanaryana* is well recognised by this Court but the ratio of rulings is not applicable to the facts of the present case.

22. The copy of the inquiry file was placed on record by the CTU in response to the application dated 06.07.2023 moved by the workman seeking to produce the inquiry file. The way bill which is part of the inquiry file (internal page No.13 & 14) would reveal that in the end of the way bill the inspectorate staff reported fraud ₹ 640/-, taken un-punched tickets. Gurvinder Singh - I, Inspector in his statement recorded before the Inquiry Officer stated that on 21.08.2013 he along with Shri Nirmal Singh and Shri Rakesh Sharma, Inspectors made a fraud report of ₹ 640/-. The said report may be treated as his statement. In cross-examination before the Inquiry Officer Gurvinder Singh - I stated that it is correct that Shri Rakesh Sharma did not enter the bus for checking. The conductor did not raise any objection about report. Only brief note has been recorded on the way bill. He does not know who was Driver of the bus. If the bus had not been checked, the conductor would have committed fraud. Shri Rakesh Sharma - Inspector in his cross-examination before the Inquiry Officer stated that he does not want to give statement against the conductor today. He recorded the note on the way bill. He did not enter the bus nor he saw any without ticket passenger. He recorded in the note only fraud of ₹ 640/-. There were few without ticket passengers. Cash was not checked. Passengers were travelling in the bus. No statement was recorded of without ticket passengers. Nirmal Singh collected un-punched tickets. Nirmal Singh - Inspector in cross-examination before Inquiry Officer stated that the way bill of conductor was in possession of Shri Gurvinder Singh - I at the time of checking. The note was recorded by Shri Rakesh Kumar. The note on the way bill is short one and not in detail. Three without ticket passengers were detected by him. He does not remember who was driving the bus. No passenger gave statement against Conductor C-731. No cash was checked. There are material discrepancies in the testimony of three inspectors of inspectorate staff, who were examined by the Inquiry Officer. Shri Gurvinder Singh - I, Inspector stated that he along with Nirmal Singh and Rakesh Sharma entered the bus and collectively detected without ticket passenger whereas Shri Rakesh Sharma, Inspector stated that he did not enter the bus and remained out of the bus. He did not check the bus nor he saw any without ticket passenger. When Shri Rakesh Sharma, Inspector neither entered the bus nor checked the bus along with the other members of the inspectorate staff nor seen any without ticket passenger travelling in the bus, in that situation the note given by him regarding fraud of ₹ 640/- on the way bill carries no authenticity. Inspector Gurvinder Singh - I in his cross-examination stated that they collectively detected without ticket passenger. In his further statement Inspector Gurvinder Singh - I in a self-contradictory manner stated that it is correct that Shri Rakesh Sharma did not enter the bus for checking. Even Shri Nirmal Singh in a contradictory manner stated that three without ticket passengers were detected by him. In view of their aforesaid statement, the version of Shri Gurvinder Singh - I stands falsified that they collectively detected 9 without ticket passengers. DW2 Shri Bahal Singh in his examination-in-chief before the Inquiry Officer stated that on 21.08.2013 he was posted on duty as a Driver on the Bus in question. Their bus was checked at Dayala Chowk at about 03:25 P.M. by Inspectors S/Sh. Gurvinder Singh, Nirmal Singh and Rakesh Sharma. He parked the bus at side of the road during the checking. The checking party enquired from him about his uniform in response to which he told them that his uniform had got a bit dirty in process of washing the vehicle earlier. At the time of checking a mess ensued and a loud noise occurred where in the passenger were saying that they had already taken the tickets but the checking staff was saying that the passenger were without tickets. Thereafter, Inspectors Gurvinder Singh took out some tickets from the ticket bundle. At the time the charged official (CO / workman here-in) had already handed over the ticket bundle to Inspector Gurvinder Singh. The CO was saying the checking staff had been making wrong report against CO as all the passengers were having tickets with them. He (DW2) had also asked the checking staff not to make a wrong report but the checking staff did not listen and they made a wrong report against the CO. The management has failed to controvert the fact that Shri Bahal Singh was the driver of the bus at the time of checking. Thus, the presence of Shri Bahal Singh - Driver at the spot cannot be doubted. DW2 Bahal Singh in his examination-in-chief before the Inquiry Officer categorically stated that at the time of checking a mess ensued and a loud noise occurred wherein the passengers were saying that they had already taken the tickets but the checking staff was saying that the passengers were without tickets. Thereafter, Inspector Gurvinder Singh took out some tickets from the ticket bundle. At that time the CO had already handed over the ticket

bundle to Inspector Gurvinder Singh. The CO was saying the checking staff had been making the wrong report against CO as all the passengers were having tickets with them. This fact has not been controverted in his cross-examination conducted by the Presenting Officer. Under the law the fact deposed by a witness which is not controverted in his cross-examination is deemed to be admitted. This fact has been completely ignored by the Inquiry Officer. The only reason that Shri Bahal Singh - Driver and Shri Kuldeep Singh - Conductor have become friends being their duty on the same route is no ground to discard the testimony of Shri Bahal Singh - Driver.

23. It is undeniable fact of the management that the inspectorate staff has given a brief note on the way bill. The details of fraud and number of un-punched tickets has not been mentioned in the said brief note given on the way bill and no statement of any passenger was recorded. The management's plea before this Court that the conductor-workman admitted his guilt before the inspectorate staff and the passengers travelling in the bus and thereafter signed the way bill is not acceptable because there is no statement of the conductor-workman wherein he has admitted his guilt. There is no statement of any passengers in whose presence the conductor-workman admitted his guilt. Moreover, it is the requirement of the instructions issued by the Divisional Manager, CTU and Director Transport, U.T. Chandigarh that the signature of the conductor is required to be taken on the way bill after recording the note. Therefore, the signature of conductor-workman on the way bill does not amount to admission of guilt. The plea taken by Learned Representative for the workman that the inspectorate staff has violated the instructions dated 13.12.2007 / Exhibit 'W4' issued by Divisional Manager, CTU and Director Transport, U.T. Chandigarh while checking the bus. On the other hand, Learned Law Officer has argued that the instructions issued vide letter Exhibit 'W4' are only advisory and not directory as specifically pleaded by the management in para 6 (c) of written reply. MW1 Gurvir Kaur in her cross-examination stated that she has gone through the inquiry file of the workman. MW1 admitted as correct that apart from the report and the statement of the inspector who checked the bus, there is no statement of any one to prove the misconduct of Kuldeep Singh. MW1 denied the suggestion as wrong that recording of the statement of passengers alleged to be found without tickets was mandatory as per the instructions issued by the C T U .

To my opinion, the aforesaid argument of Learned Law Officer is devoid of merits in view of the contents of instructions dated 13.12.2007 / Exhibit 'W4'. For better appreciation the contents of instructions dated 13.12.2007 / Exhibit 'W4' are reproduced as below :-

"O R D E R

It is hereby ordered that in future while checking the buses, the Inspectors / Flying Squads will give the following particulars on the way bill :-

- 1. Detailed note regarding the fraud / the case detected.*
- 2. Un-punched tickets.*
- 3. Signature of the conductor being checked to be taken on the way bill after recording the note and if the conductor refused to sign then another note be given that the conductor was asked to sign and he has refused to sign.*
- 4. Statement of atleast one passenger. Non-compliance of these instructions will be viewed seriously."*

24. From the abovementioned contents of instructions dated 13.12.2007 / Exhibit 'W4' it is duly proved on record that the instructions are not advisory but directory in nature. In the present case, the management has failed to prove the compliance of the instructions mentioned at serial No.1, 2 & 4 above.

25. The management failed to controvert the fact that the checking / inspectorate staff did not check the cash of the conductor. In this regard MW1 Gurvir Kaur in her cross-examination before this Court denied the suggestion as wrong that the checking of cash of the Conductor was mandatory to know the excess amount to prove the allegation of not issuing tickets after collecting the bus fare. Shri Nirmal Singh, Inspector in his cross-examination before the Inquiry Officer stated that no cash was checked. Shri Gurvinder Singh - I, Inspector in his statement before the Inquiry Officer nowhere stated that he checked the cash of the conductor.

Shri Rakesh Sharma, Inspector in his cross-examination before the Inquiry Officer stated that the cash was not checked. In order to ascertain whether the inspectorate / checking staff was required to check the cash of the conductor at the time of checking of bus or not, it would be apposite to go through the instructions dated 03.03.1987 issued by General Manager, Chandigarh Transport Undertaking, Chandigarh. The workman during his testimony has proved the instructions dated 03.03.1987 issued by General Manager, Chandigarh Transport Undertaking, Chandigarh vide Exhibit 'W5'. The relevant instruction at serial No.5 of instructions dated 03.03.1987 / Exhibit 'W5' is as under :-

"5. They should also check the personal cash of the Conductor and ensure whether the Conductor got verified his personal cash from any authorised official on duty before starting his duty."

26. In the present case, admittedly no statement of any passenger travelling in the bus was recorded. In report dated 22.08.2013 made by the inspectorate staff which has formed the basis of charge sheet, no reason has been given for not recording the statement of any passenger travelling in the bus. It is not the case of the management that the passengers refused to give statement. The inspectorate staff did not check the personal cash of the conductor and thus failed to comply with condition incorporated at serial No.5 of Exhibit 'W5'. Therefore, the procedure adopted by the inspectorate staff to check the bus is in violation to the instructions dated 03.03.1987 / Exhibit 'W5' which are directory in nature. In the judgment referred by Learned Representative for the workers' union reported in **2001(4) SCT 936** titled as **State of Haryana Versus Bikkar Singh**, which is applicable to the facts of the present case, it has been held that in the absence of statements of the passengers either before the domestic Tribunal or before the checking staff, the plaintiff cannot be held responsible for embezzlement. In the absence of the statements of the passengers, the statement of checking staff has no basis.

27. The management has failed to controvert the fact that at the time of checking of bus Shri Gurvinder Singh - I, Inspector, was on duty in the area of Chandigarh, Mohali and Panchkula as per order No.99/Traffic/SS/CTU/2013 dated 17.05.2013 copy of which is Annexure 'B' in the inquiry file. The management has failed to justify how Shri Gurvinder Singh - I, Inspector was authorised to conduct checking of the bus at Chandigarh to Katra route at Dahya chowk. No evidence is forthcoming on record as to which authority has issued verbal orders to Shri Gurvinder Singh - I, Inspector to conduct the checking of the bus beyond his territorial jurisdiction.

28. AW1 Kuldeep Singh in his cross-examination admitted as correct that he was awarded several punishments at number of occasions for fraud case. The management has taken the plea that competent authority had gone through the past service record of the workman which was found unsatisfactory. The record of the workman showed that he is habitual offender. The workman has committed several offences while performing his duties and punished many times for the same. The workman did not mend his style of working. After considering all these facts the punishment order was passed by the competent authority, which was upheld in the appeal by the competent Appellate Authority. The aforesaid plea of the management would suggest that while awarding punishment to the workman his previous conduct was taken into consideration. Admittedly, the previous conduct of the workman was not part of the charge-sheet or show cause notice. The management has given the history sheet of punishments awarded to the workman mentioned in para 1, serial No.1 to 21 in preliminary submissions of written reply and para 2, serial No.1 to 20 of affidavit Exhibit 'MW1/A' tendered by MW1 Gurvir Kaur. When put to cross-examination MW1 Gurvir Kaur admitted as correct that the contents (serial No.1 to 20) incorporated in para 2 of her affidavit Exhibit 'MW1/A' was neither part of the charge sheet nor of show cause notice. In the judgment referred by Learned Representative for the workers' union reported in **2010(4) SCT 600** titled as **Mohd. Yunus Khan versus State of U.P. & Others**, which is applicable to the facts of the present case to an extent, Hon'ble Supreme Court of India was observed that the Appellate Authority could not consider the past conduct of the appellant to justify the order of punishment passed by the disciplinary authority without bringing it to the notice of the appellant. If the disciplinary authority wants to consider the past conduct of the employee in imposing a punishment, the delinquent is entitled to notice thereof and generally the charge sheet would contain such an article or he should be informed of the same at the stage of show cause notice for imposing punishment. In the present case, as stated by MW1 the previous

conduct of the workman was neither a part of show cause notice nor charge sheet. No notice was given to the workman either by the Punishing Authority or by the Appellate Authority before taking into consideration his previous conduct. Relevant para 34 of the judgment **2010(4) SCT 600 SC (supra)** is reproduced as below :-

"34. This Court in Union of India & Ors. v. Bishamber Das Dogra, (2009) 13 SCC 102, considered the earlier judgments of this Court in State of Assam v. Bimal Kumar Pandit, AIR 1963 Supreme Court 1612; India Marine Service (P) Ltd. v. Their Workmen, AIR 1963 Supreme Court 528; State of Mysore v. K. Manche Gowda, AIR 1964 Supreme Court 506; Colour-Chem Ltd. V. A.L. Alaspurkar & Ors., 1998(1) S.C.T. 757 : AIR 1998 Supreme Court 948; Director General, RPF v. Ch. Sai Bau, 2003(1) S.C.T. 820 : (2003)4 SCC 331, Bharat Forge Co. Ltd. V. Uttam Manohar Nakate, 2005(1) S.C.T. 745 : (2005)2 SCC 489; and Govt. of A.P. & Ors. v. Mohd. Taher Ali, 2007(4) S.C.T. 615 : 2007(6) R.A.J. 59 : (2007)8 SCC 656 and came to the conclusion that it is desirable that the delinquent employee be informed by the disciplinary authority that his past conduct could be taken into consideration while imposing the punishment. However, in case of misconduct of a grave nature, even in the absence of statutory rules, the Authority may take into consideration the indisputable past conduct/service record of the delinquent for adding the weight to the decision of imposing the punishment if the fact of the case so required."

29. Learned Law Officer argued that the industrial dispute reference and the claim statement is time barred. To support his argument Learned Law Officer referred the judgments reported in **2000(3) Vol. 75 All India Services Law Journal 22 SC** titled as **Nedungadi Bank Limited Versus K. P. Madhavan Kutty** and judgment dated 26.08.2019 passed by the Hon'ble High Court of Himachal Pradesh in **CWP No.4847 of 2015** titled as **Prithvi Singh Versus Executive Engineer, HPSEV Limited, Division Rajgarh, District Sirmaur, H.P. & Others**. To my opinion, the above referred judgments reported on 2000(3) Vol. 75 All India Services Law Journal and judgment dated 26.08.2019 in CWP No.4847 of 2015 (supra) are not applicable to the facts of the present case as the appeal was decided on 14.06.2019 / endorsement dated 20.06.2019 vide Exhibit 'W3'. Thereafter, within the same year 2019 workman raised demand notice wherein the conciliation proceedings before Assistant Labour Commissioner-cum-Conciliation Officer failed vide memo No.2934 dated 13.12.2022 and the workers' union was given liberty to approach this Court directly. Therefore, the demand notice as well as the industrial dispute reference are well within the limitation period. The management did not challenge the aforesaid order of Assistant Labour Commissioner.

30. In view of the discussion made above, the procedure adopted by the Inquiry Officer is correct. However, the findings of misconduct recorded by the Inquiry Officer are incorrect for non-appreciation of defence evidence and misreading of evidence led during the inquiry proceedings. The findings of the Inquiry Officer are perverse. For the inquiry to be considered fair and reasonable, the inquiry report must contain reason for reaching conclusion that charge against the delinquent stood proved. As discussed above, in the present case the findings recorded by the Inquiry Officer based on misreading of evidence and non-appreciation of defence evidence cannot be considered as fair and proper.

31. The order of punishment dated 01.12.2017 / 02.01.2018 Exhibit 'W1' and order of appeal dated 14.06.2019 / 19.06.2019 Exhibit 'W3' based on the inquiry report and previous conduct of the workman are illegal and against the principles of natural justice and therefore, same are hereby set aside. The workman is entitled to all consequential benefits arising from setting aside of orders Exhibit 'W1' and Exhibit 'W3'.

32. Accordingly, issue No.1 & 2 are proved in favour of the workman / workers' union and against the management. Issue No.4 is proved in favour of the management only to the extent of procedure adopted by the Inquiry Officer and against the workman / workers' union.

Issue No. 3 :

33. Onus to prove this issue is on the management.

34. Learned Law Officer contended that before approaching this Court the workman must avail the remedy of review. In the present case, the workman did not file the review application before the competent authority, therefore, the present reference is pre-mature. To my opinion, the aforesaid contention raised by

Learned Law Officer is devoid of merits because it is not mandatory for the workman to avail remedy of review after decision of his appeal. The workman has exhausted the remedy of appeal. On dismissal of appeal of the workman, the workers' union raised the demand notice against the management. The intervention of the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was called. The conciliation proceedings failed and the workers' union was advised to approach the appropriate Court at their own level for further adjudication vide failure report bearing Memo No.2934 dated 13.12.2022 of Assistant Labour Commissioner, U.T. Chandigarh.

35. Accordingly, this issue is decided against the management and in favour of the workman / workers' union.

Relief :

36. In the view of foregoing finding on issue No.1 to 3, the present industrial dispute is allowed. The order of punishment dated 01.12.2017 / 02.01.2018 Exhibit 'W1' and order of appeal dated 14.06.2019 / 19.06.2019 Exhibit 'W3' are hereby set aside. The workman is held entitled to all consequential benefits arising from setting aside of orders Exhibit 'W1' and Exhibit 'W3'. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

Dated : 05.02.2024.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, Mukesh Kumar, S/o Dharam Pal, House No. 3074/1, Sector 22-D, Chandigarh, have changed my name from Mukesh Kumar to Mukesh Sharma.

[676-1]

I, Arsad, S/o Shabbir Ahmad, R/o 1632, Kumhar Mohalla, Sector 45, Burail, Chandigarh, have changed my name to Mohd Arshad.

[677-1]

I, Renu, W/o Rajinder Kumar Babbar, # 434/10, Mohalla Dera Sahib, Manimajra, Chandigarh, have changed my name to Renu Babbar.

[678-1]

मैं, Meenu, पत्नी Balwinder Singh, निवासी 2942, Sector 47-C, Chandigarh, ने अपना नाम बदलकर Meenu Rani रख लिया है।

[679-1]

I, Sarafat Ali, S/o Mohamad Umar, # 6561/C, Sector 56, Chandigarh, have changed my name to Srafat.

[680-1]

मैं, Reena, W/o Sh. Ashok Kumar, निवासी हाउस नं. 721/16, BDC, सेक्टर 26, चंडीगढ़, सूचित करती हूँ कि मैं अपना नाम Reena से बदलकर Reena Devi रख रही हूँ।

[681-1]

I, Lakhwinder Singh Mann, S/o Kulwant Singh, R/o House No. 973, Deep Complex, Hallomajra, Chandigarh, have change name of my minor son Ridham Sharda to Ridham Mann vide affidavit dt. 2.5.2024.

[682-1]

I, Lakhwinder Singh, S/o Kulwant Singh, R/o House No. 973, Deep Complex, Hallomajra, Chandigarh, have changed my name to Lakhwinder Singh Mann vide affidavit dt. 2.5.2024.

[683-1]

I, Seema Sharda, W/o Lakhwinder Singh, R/o House No. 973, Deep Complex, Hallomajra, Chandigarh, have changed my name to Seema Mann vide affidavit dt. 2.5.2024.

[684-1]

I, Jatinder Singh, R/o # 2578, Sector 19-C, Chandigarh, have changed my name to Jatinder Singh Thind.

[685-1]

I, Seema Kumari, W/o Lekh Raj, R/o # 5503, Sector 56, Chandigarh, have changed my name to Swarna Devi.

[686-1]

I, Neeru, W/o Sanjay Chugh, R/o H.No. 114, Sector 45-A, Chandigarh, declare that my father name is wrongly recorded in my educational and other relevant documents and my correct father name is Tek Chand Anand.

[687-1]

"No legal responsibility is accepted for the contents of publication of advertisements/public notices in this part of the Chandigarh Administration Gazette. Persons notifying the advertisements/public notices will remain solely responsible for the legal consequences and also for any other misrepresentation etc."